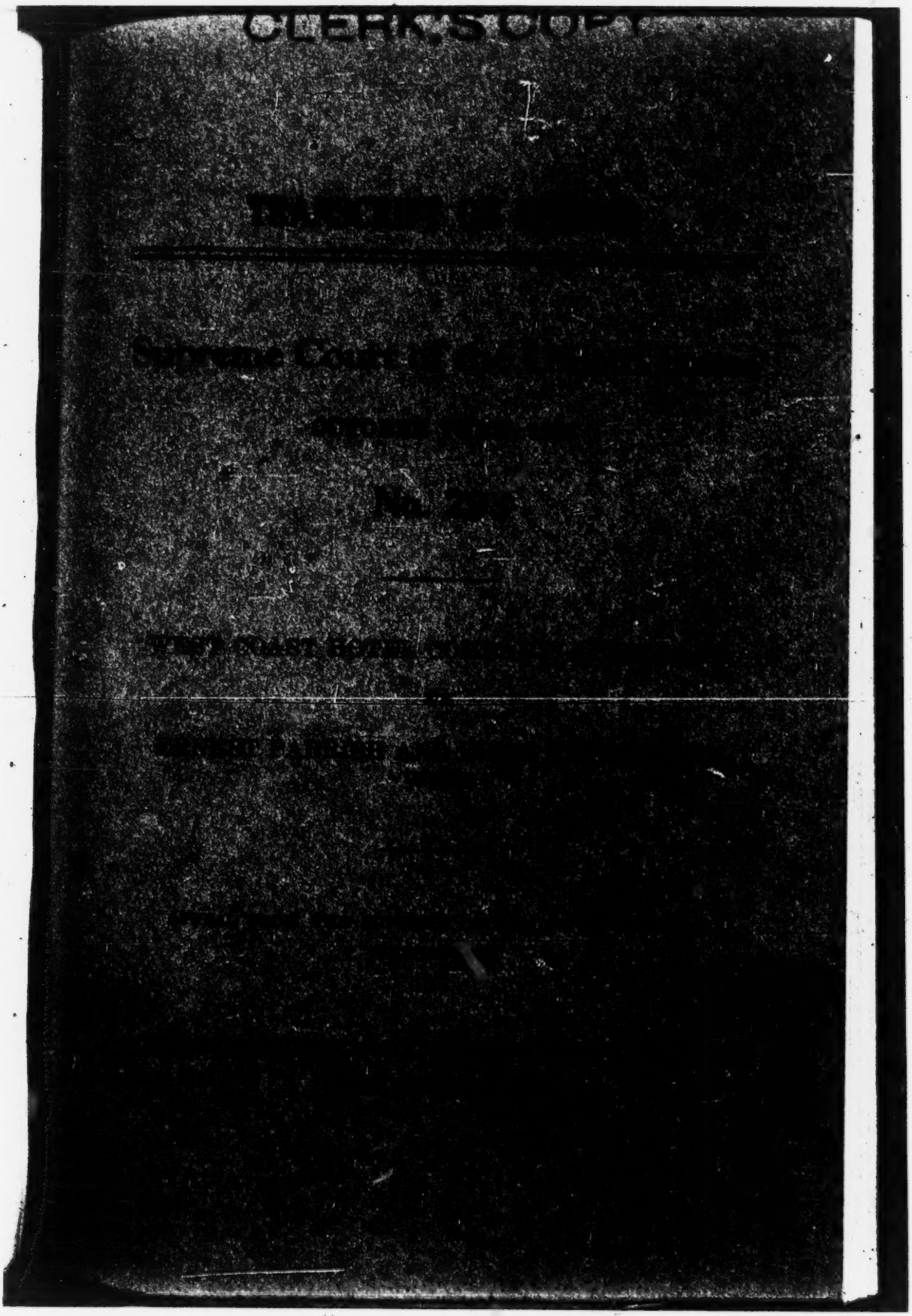

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, APPELLANT,

vs.

ERNEST PARRISH AND ELSIE PARRISH, HIS WIFE

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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[fol. 1] [Caption omitted]

[fol. 2] **IN SUPERIOR COURT OF CHELAN COUNTY**

No. 12215

ERNEST PARRISH and ELSIE PARRISH, His Wife, Plaintiffs,

vs.

WEST COAST HOTEL COMPANY, a Corporation, Defendant

AMENDED COMPLAINT—Filed July 12, 1935

Come now the Plaintiffs in the above entitled action and for this their amended-complaint alleges and say:

I

That the Defendant is a corporation doing business as a hotel company and in the conduct of the said business at the times hereinafter named did operate the Cascadian Hotel at the City of Wenatchee, County of Chelan State of Washington.

II

That in the operation of the said Cascadian Hotel, the Defendant through its agents and manager did employ the Plaintiff, Elsie Parrish, to work and labor as a chambermaid in the said hotel, and that pursuant to said employment she did work and labor for the Defendant as follows:

1933:

August, 24½ hours.
September, 104½ hours.
October, 31 hours.

1934:

February, 65 hours.
March:

16	8	hours.
17	6½	
18	8	
19	8	
20	4	
21	8	
22	5	

1934:

March:

23	8	
24	8	
25	8	
26	4	
27	5	
28	7½	
29	8	
30	8	
Total	104	hours.

April:

1	7	hours.
3	7	
4	8	
5	8	
6	8	
7	8	
12	8	
13	7½	
14	8	
15	8	
16	8	
18	8	
19	8	
20	8	
21	8	
22	8	
23	8	
25	8	
26	4½	
27	8	
28	8	
29	8	
30	7½	
Total	177½	hours.

May:

2	8	hours.
3	8	
4	8	

1934:

May:

5	8	
6	6½	
7	8	
9	8	
10	8	
11	8	
12	8	

[fol. 3]

13	7½	
14	8	
15	6½	
Total	100½	hours.

July:

9	4	hours.
11	4	
12	4	
13	5	
14	7	
15	7	
16	8	
17	6½	
18	8	
20	8	
21	8	
22	8	
24	7	
25	6½	
26	7	
27	8	
28	7½	
30	6½	
31	5	
Total	129	hours.

August:

1	6½	hours.
3	8	
4	8	
5	7	

1934:

August:

6	6
7	7½
8	7
9	6½
10	8
12	8
13	8
14	7½
15	8
17	8
18	8
19	8
20	8
21	8
22	8
23	7½
24	8
26	7
27	8
28	8
29	6½
30	8
31	4½
Total	201½ hours.

September:

2	8 hours.
3	8
4	8
5	8
6	8
7	8
8	4
10	8
11	8
12	8
13	8
14	8
15	8
17	8

1934:

September:

18	8	
19	8	
20	8	
21	8	
23	5½	
24	8	
28	8	
29	8	
30	4½	
Total	197	hours.

October:

1	8	hours.
2	8	
3	8	
4	7½	
5	7½	
6	7½	
8	8	
9	8	
10	7	
11	6½	
12	8	
13	8	
15	8	
16	8	
17	8	
18	8	
19	8	
20	8	
22	8	
23	8	
24	8	
25	8	
26	8	
27	7	
29	8	
30	7½	
Total	202½	hours.

1934:

November:

1	5	hours.
2	8	
3	7	
5	6	
6	8	
7	8	
8	7½	
9	8	
10	7½	
12	7	
13	7	
14	7½	
15	7½	
16	7½	
17	8	
19	6½	
20	7	
21	7½	
22	7½	
23	7½	
24	4½	
26	8	
27	4	
28	4	
29	4½	
Total	164½	hours.

December:

3	6	hours.
4	7½	
5	8	
6	8	
7	8	
8	7½	
10	6½	
12	6	
13	7½	
14	5½	
15	7½	
16	8	
18	7	

1934:

December:

19	6½	
20	6	
23	4	
24	6	
25	6½	
26	4	
27	4½	
30	5	
31	5	
Total	140½	hours.

1935:

January:

1	7	hours.
2	4½	
3	6	
4	7	
5	4½	
7	7	
8	5	
9	6½	
10	8	
11	7½	
12	7½	
13	8	
14	7	
15	8	
16	8	
17	7½	
18	7½	
19	7½	
21	7½	
22	6½	
23	5½	
24	6½	
25	8	
26	6½	
28	6½	
29	8	
30	8	
31	8	
Total	195	hours.

1935:
[fol. 4]

February:

1	7½	hours.
2	7½	
4	8	
5	7½	
6	8	
7	7½	
8	8	
9	8	
11	8	
12	7½	
13	7½	
14	8	
20	5½	
21	8	
22	8	
23	8	
25	8	
26	8	
27	8	
28	8	
Total	177½	hours.

March:

1	8	hours.
2	7	
4	8	
5	8	
6	8	
7	8	
8	8	
9	8	
11	8	
12	8	
13	8	
14	8	
15	8	
16	5	
18	8	
19	8	
20	8	

1935:

March:

21	8	
22	8	
23	8	
25	8	
26	8	
27	8	
28	8	
29	8	
30	8	
Total	204	hours.

April:

1	8	hours.
2	8	
3	8	
4	8	
5	8	
6	8	
8	8	
9	8	
10	8	
11	8	
12	8	
13	8	
15	8	
16	8	
17	8	
18	8	
19	8	
20	8	
22	8	
23	8	
24	8	
25	8	
26	8	
27	8	
29	8	
30	8	
Total	208	hours.

1935:

May:		
1	4	hours.
3	8	
4	8	
5	8	
6	8	
7	8	
8	8	
10	8	
11	8	
Total	68	hours.

A total of 2,504½ hours, or 52 weeks and 8½ hours.

III

That by and according to the laws of the State of Washington in force at the time of the said employment and during all of the time the said labor was being performed, the [fol. 5] reasonable compensation and legal and statutory wages for the work so performed by the said Elsie Parrish was and is the sum of $14.50 per week and 48 hours did and does constitute a week, and that the labor so performed was without any additional or other contract, agreement, or arrangement for compensation; and upon the legal and statutory wage of $14.50 for each 48 hours or fraction thereof, that the said Plaintiff worked and labored for the Defendant at the said rate of wages and compensation for 2,504½ hours, which constitutes 52 weeks and 8½ hours. And there became and was due to her and she earned for said labor the sum of *of* $754.39, upon which the Defendant paid the sum of $538.20, leaving a balance due to the Plaintiff, Elsie Parrish, for the said labor at the rate of $14.50 for each 48 hours constituting a week, the sum of $216.19.

IV

That on or about the 12th day of May, 1935, the Defendant discharged the said Plaintiff and the said Elsie Parrish thereupon made demand upon the Defendant for the payment of the balance due for said services at the rate herein set forth, which was by the Defendant refused.

V

That previous to and at the time of the said employment and during all of the time of performance of the said labor, there had been passed by the legislature of the State of Washington and was in force an act relating to the employment of women and creating and establishing a commission known as the Industrial Welfare Commission of the State of Washington, with powers to establish conditions of labor and to fix reasonable standard wages sufficient for the decent maintenance of women. And that pursuant to the said law, the said Industrial Welfare Commission of the State of Washington was created and did make rules and regulations governing the employment of women and fixing a reasonable standard wage for certain [fol. 6] labor performed by women within the State of Washington; and that prior to the employment of the said Elsie Parrish as hereinbefore set forth, the said Industrial Welfare Commission had made said investigation and did establish rules and regulations governing such employment by women and fixing the compensation to be paid by the employers for such labor. And said rules and regulations were in existence and in operation during all of the time hereinbefore mentioned and were well-known to the Defendant, and which rules state as follows; to-wit:

The Industrial Welfare Committee for the State of Washington does hereby Order:

(1) That no person, firm, association or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State at a weekly wage rate of less than fourteen dollars and fifty cents ($14.50) per week of forty-eight hours, or at a daily wage rate of less than two dollars and fifty cents ($2.50) per day of eight hours, or at an hourly wage rate of less than thirty-five cents (35¢) per hour, such wage rates being the estimate of said Conference of the minimum wage adequate to supply the necessary cost of living and to maintain such employees in health and comfort. (The interpretation of this paragraph affecting the wage rates shall be that the weekly wage rate shall prevail where the employment extends over a period of one week or more; that the daily wage rate shall prevail where em-

ployment is for one or more days of eight hours, and the hourly wage rate shall prevail where employment is for less than eight hours in any one day.)

(2) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than six days in any one week; Provided, however, That when a sufficient emergency exists, [fol. 7] such as renders it absolutely impossible to secure efficient substitute help, the employees in the Public Housekeeping Industry may be employed for a continuous period of not exceeding ten consecutive days, at the expiration of which ten-day period they shall be given one day's rest. This emergency privilege shall not preclude any such employee from having at least four days' rest in any twenty-eight day period.

(3) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than five hours without a rest period of at least one-half hour; that a schedule of hours be posted in all cases.

(4) That where the special uniform be required it must be furnished and laundered by the employer.

(5) That when meals are furnished to employees the time used in eating may be deducted in arranging the schedule; that if a room be furnished same must be properly heated and sanitary.

(6) That there must be separate toilets for women and a suitable room provided for change of clothing and for eating lunches.

(7) That women shall not be employed as elevator operators after 12:00 midnight.

(8) That women shall not be employed as "bell hops."

(9) That when board is furnished 95 cents a day may be deducted; and for a room furnished $2.00 per week may be deducted; that 20 cents may be deducted for breakfast, 30 cents for lunch and 45 cents for dinner; that in every case there shall be a definite agreement as to whether board and room shall or shall not be furnished; that otherwise straight wage scale shall prevail.

(10) This Order shall become effective sixty (60) days from the date hereof, or October 4, 1921, and supersedes all other Orders heretofore issued, covering this industry."

[fol. 8] VI

That during the time of the said employment these Plaintiffs were intermarried and are now husband and wife.

Wherefore, Plaintiffs pray for judgment against the Defendant in the sum of $216.19, together with the costs of this action, and for such other and further relief as the premises justify.

C. B. Conner, Attorney for Plaintiffs.

Duly sworn to by Elsie Parrish. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 9] In Superior Court of Chelan County

[Title omitted]

Answer to Amended Complaint—Filed September 9, 1935

Comes now the defendant in the above action, and for Answer to plaintiffs' Complaint alleges as follows:

I

Admits that defendant employed plaintiff Elsie Parrish as maid, commencing during the month of August, 1933, and ending in May, 1935, and that the total hours of labor as set forth in plaintiff's Amended Complaint are substantially correct.

II

Defendant denies the allegations contained in paragraph III, except that the plaintiff worked for the defendant approximately 2504 hours; denies that the plaintiff was to receive $14.50 per week or any compensation other than that hereinafter specified; denies that the plaintiff earned the sum of $754.39 or any sum greater than $646.63, and denies that the defendant is indebted to the plaintiff in the sum of $216.19 or any sum whatsoever.

III

Defendant denies each and every allegation contained in paragraph V of plaintiffs' Amended Complaint.

For a further, separate and affirmative defense, defendant alleges:

That during the month of August, 1933, at which time the Plaintiff Elsie Lee (now Elsie Lee Parrish) was over the age of twenty-one years, she engaged to work for the defendant at its Cascadian Hotel in Wenatchee, Washington, [fol. 10] at an agreed wage of twenty-two and one-half cents per hour plus a light luncheon to be furnished by defendant to the plaintiff; that said arrangement continued until September 30, 1933, when by mutual consent plaintiff and defendant changed the rate of agreed compensation from 22½¢ per hour and luncheon to twenty-five cents per hour without luncheon furnished; that under the above mentioned arrangement the plaintiff continued to work for the defendant until May, 1935, at which time plaintiff was discharged; that at the time of plaintiff's discharge there was owing to her from the defendant the sum of $17.00, and no more, which amount was tendered to the plaintiff by the defendant in the same manner as all other payments had been made and accepted by the plaintiff since August, 1933, but plaintiff refused to accept said payment of $17.00 and continued to refuse to accept the same; the defendant herewith keeps the tender good by depositing the sum of $17.00 in court.

For a further, separate and second affirmative defense, defendant alleges:

That between August, 1933, and the last day of April, 1935, the defendant paid to the plaintiff the sum of $629.63, which was accepted by said plaintiff in full accord and satisfaction of all claims of plaintiff against the defendant, arising between said dates.

For a further separate and third affirmative defense, defendant alleges:

That the Act passed by the legislature of the State of Washington known as Chapter 174, Laws of 1913, purporting to delegate to an Industrial Welfare Commission the power to establish and fix standards of wages for employees in various industries of this State, and particularly the wages to be paid employees in housekeeping industry (hotels) is in violation of the constitutional rights of this

defendant as guaranteed it under Article V and Section 1 of Article XIV of the Constitution of the United States and [fol. 11] Sections 2 and 3 of Article I of the Constitution of the State of Washington.

Wherefore, defendant prays that the plaintiff take nothing by this action and that the same be dismissed with prejudice and with costs in favor of the defendant.

Crollard & O'Connor, Attorneys for Defendant.

Duly sworn to by Willard Abel. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] In Superior Court of Chelan County

[Title omitted]

Reply—Filed September 24, 1935

Come now the Plaintiffs in the above entitled action, and for their Reply to the Defendant's Answer to the Amended Complaint, allege and say:

I

Plaintiffs deny all of the allegations of said Answer which in any way dispute or deny the claims of the Plaintiffs.

II

Plaintiffs deny all allegations of said Answer which state, claim or purport to claim that the Plaintiff, Elsie Parrish, worked for the Defendant or agreed to do so at any price or compensation other than set forth in the Complaint herein; and deny the allegations of the Defendant that the sum of $17.00 and no more was due for her services, and alleges the fact to be that there was and is due the sum set forth in the Plaintiff's Complaint.

III

Plaintiffs also deny the allegations of receipt of $629.63 in full settlement and allege the fact to be that the said sum

was paid upon the account, leaving the amount due as set forth in the Plaintiff's Complaint.

IV

Further replying to said Answer, Plaintiffs allege and say that under the Statutes of the State of Washington in force at the time of the employment and during all of the said employment it was and is unlawful for the Defendant [fol. 13] to employ said Elsie Parrish at a price and for a compensation less than that provided by law and as claimed in the Plaintiffs' Complaint; and that all allegations of the Defendant's Answer seeking to set up and assert an employment at a rate less than the said statute provides is a violation of said statute and such claim constitutes no defense.

Wherefore, having fully replied to the Defendant's Answer, Plaintiffs pray for judgment as demanded in the Complaint herein.

C. B. Conner, Attorney for Plaintiffs.

Duly sworn to by Elsie Parrish. Jurat omitted in printing.

Service accepted Sept. 24, 1935. Crollard & O'Connor, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 14-16] In Superior Court of Chelan County

No. —

Ernest Parrish and Elsie Parrish, His Wife, Plaintiffs,

vs.

West Coast Hotel Company, a Corporation, Defendant

Judgment and Decree—Filed November 9, 1935

This cause came on regularly for trial before the above entitled Court, Hon. W. O. Parr sitting without a jury, on October 17, 1935; the case was tried upon the plaintiff's Amended Complaint, the defendant's Answer thereto, and the plaintiff's Reply; plaintiffs were present in person and

represented by their attorney of record, C. B. Connor, Esq.; the defendant was represented by its attorney of record, Crollard and O'Connor; witnesses were sworn and both oral and documentary evidence was offered and received; after both parties announced they rested their case, and arguments for counsel of respective parties were heard; and the Court being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law,

It is Here and Now Considered and Ordered that the minimum wage Act, Chapter 174, Laws of 1913, and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the Constitutional rights of this defendant guaranteed it under Amendment 5, and Section 1 of Amendment 14 of the Constitution of the United States.

It is Further Considered and Ordered that plaintiff is entitled to Judgment against defendant in the sum of $17.00, and costs.

Done in Open Court this 9th day of November, 1935.

W. O. Parr, Judge.

[File endorsement omitted.]

[fols. 17-20] In Superior Court of Chelan County

[Title omitted]

Notice of Appeal—Filed November 18, 1935

To the Above Named Defendant, West Coast Hotel Company and Crollard & O'Connor, Attorneys of Record:

Notice is Hereby Given that the Plaintiffs, Elsie Parrish and Ernest Parrish, feeling aggrieved, do hereby appeal to the Supreme Court of the State of Washington from that certain Judgment entered in the above entitled cause and court on the 9th day of November, 1935, and from each and every part thereof, wherein and whereby it was adjudged that the mimimum wage Act, Chapter 174, Laws of 1913, of the State of Washington and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of

the Constitutional rights of this defendant guaranteed it under Amendment 5, Section 1 of Amendment 14 of the Constitution of the United States; and whereby the Plaintiffs were awarded the sum of only $17.00 and costs instead of the sum of Two Hundred Sixteen Dollars and Nineteen Cents ($216.19) as claimed by the Plaintiffs.

Dated at Wenatchee, Washington, this 18th day of November, 1935.

C. B. Conner, Attorney for Plaintiffs.

Copy of the foregoing Notice of Appeal received and service admitted at Wenatchee, Washington, this 18th day of November, 1935.

Crollard & O'Connor, Attorneys for Defendant.

[fol. 21] In Superior Court of Chelan County

[Title omitted]

Findings of Fact and Conclusions of Law—Filed November 9, 1935

This cause came on regularly for trial before the above entitled Court, Hon. W. O. Parr, sitting without a jury, on October 17, 1935; the case was tried upon the plaintiff's Amended Complaint, the Defendant's answer thereto, and the Plaintiff's reply; Plaintiff, Elsie Parrish, was present in person and represented by her attorney of record, C. B. Conner, Esq.; and the defendant, by its attorneys of record, Messrs. Crollard and O'Connor; witnesses were sworn and both oral and documentary evidence was offered and received; after both parties announced they rested their case, and arguments for counsel of respective parties were heard; and the Court being fully advised in the premises, does here and now make and enter the following:

Findings of Fact

1. That the defendant, West Coast Hotel Company, is a corporation, doing business as a hotel company, and in the conduct of said business operates the Cascadian Hotel in City of Wenatchee, Chelan County, Washington, and did at all times during the period referred to in Plaintiff's complaint.

[fol. 22] 2. That about August of 1933, the Plaintiff, Elsie Parrish, whose name at that time was Elsie Lee, was employed by the Defendant through its Manager, to work as a chambermaid in the Cascadian Hotel in Wenatchee, Washington, at an agreed wage of 22 cents per hour, plus a light luncheon; that commencing in October 1933, and thereafter to the close of her employment in May of 1935, the agreed wage to be paid said Plaintiff by the Defendant was 25 cents per hour; that during said period the Plaintiff worked 2504 hours for the Defendant and was paid for said services at the agreed wage of 22 cents per hour and 25 cents per hour (in ink) 35¢ per hr. or 14 *50* per week, respectively, a total sum of $646.63; that at the time the Defendant was discharged by the Plaintiff, to-wit: May 11, 1935, there was owing to her from the defendant the sum of $17.00, and no more, [which amount the defendant duly tendered to the plaintiff, but which the plaintiff refused to accept;]* that the defendant had theretofore paid to the plaintiff the sum of $629.63.

3. That the contention of the plaintiff that she should have been paid during all of said period at the rate of 35¢ per hour, or $14.50 per week, because of the existence of a so-called minimum wage scale for adult women, as fixed by the Industrial Welfare Commission of the State of Washington, is unsound, is not sustained by the evidence, and that any attempt to fix the minimum wage for adult women as prescribed by Chapter 174 of the Laws of 1913 and the Acts of the Industrial Welfare Commission thereunder, are as to the defendant in this case a violation of its Constitutional rights guaranteed it under Amendment [fol. 23] V and Section 1, of Amendment XIV of the Constitution of the United States, [and Sections 2 and 3 of Article I of the Constitution of the State of Washington.]*

Done in Open Court this 9th day of [October],* November 1935.

W. O. Parr, Judge.

Based upon the foregoing Findings of Fact, the Court here and now makes and enters the following:

[* Matter in brackets struck out in copy.]

CONCLUSIONS OF LAW

That the minimum wage Act, Chapter 174, Laws of 1913, and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the constitutional rights of this department guaranteed it under Amendment 5 and Section I of Amendment 14 of the Constitution of the United States.

That plaintiff is entitled to Judgment against defendant in the sum of $17.00 and costs.

Done in Open Court this 9th day of Nov., 1935.

W. O. Parr, Judge.

[File endorsement omitted.]

[fols. 24–46] Clerk's certificate to foregoing paper omitted in printing.

[fol. 47] IN SUPREME COURT OF WASHINGTON

Department Two

No. 26038

ERNEST PARRISH et al., Appellants,

v.

WEST COAST HOTEL COMPANY, Respondent

OPINION—Filed April 2, 1936

Mindful of the duty of the state to protect women and minors from conditions of labor which have a pernicious effect on their health and morals, the legislature enacted chapter 174, Laws of 1913. The provisions of the act pertinent to this appeal are as follows:

"SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that in-

adequate wages and unsanitary conditions of labor exert such pernicious effect.

"SEC. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

"SEC. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

From August, 1933, to May, 1935, when she was discharged, plaintiff was in the employ of defendant hotel corporation as a chambermaid at an agreed wage which [fol. 48] was less than the minimum weekly wage of fourteen dollars and fifty cents as fixed by the Industrial Welfare Commission under sec. 3, chapter 174, Laws of 1913. If payable at the agreed wage, defendant owes plaintiff a balance of seventeen dollars. If entitled to payment at the minimum rate established by the Industrial Welfare Commission, a balance of $216.19 is due to the plaintiff. To recover that balance, plaintiff brought this action. The cause was tried to the court, which found that plaintiff was entitled to a recovery of seventeen dollars against defendant. The court further found that chapter 174, Laws of 1913, in so far as it applies to adult women, is an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the constitution of the United States.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, Amendment XIV, Federal Constitution.

Judgment was entered accordingly. Plaintiff appealed.

In Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037, we held that the minimum wage law (chapter 174, Laws of 1913) for women was constitutional. We said:

"It is undoubtedly a general rule that private controversies between individuals sui juris may be compromised by them by mutual agreement, and that the courts will not, where no question of fraud intervenes, relieve from the agreement, even though it be shown that the one gained rights thereby to which he would not otherwise have been entitled and that the other gave up rights to which he was fully entitled; this, on the principle that compromises are favored by the law, since they tend to prevent strife and conduce to peace and to the general welfare of the community. But the controversy here had an added element not found in the ordinary controversy between individuals. It was not wholly of private concern. It was affected with a public interest. The state, having declared that a minimum wage of a certain amount is necessary to a decent maintenance of an employee engaged in the employment in which the respondent was engaged, has an interest in seeing that the fixed compensation is actually paid. The statute making the declaration not only makes contracts of em- [fol. 49] ployment for less than the minimum wage void, but has sought to secure its enforcement by making it a penal offense on the part of the employer to pay less than the minimum wage, and by giving to the employee a right of action to recover the difference between the wage actually paid and such minimum wage. The statute was not, therefore, intended solely for the benefit of the individual wage earner. It was believed that the welfare of the public requires that wage earners receive a wage sufficient for their decent maintenance. The statute being thus protective of the public as well as of the wage earner, it must follow that any contract of settlement of a controversy arising out of a failure to pay the fixed minimum wage in which the state did not participate is voidable, if not void. Especially must this be so, as here, where the contract of settlement is executory, has been repudiated by one of the parties, the parties can be placed in statu quo, and the wage earner, by carrying out the contract, will not receive the wage to which she is justly entitled."

The Oregon minimum wage law for women—in all essentials the same as our law—was sustained in Stettler v. O'Hara, 69 Or. 519, 139 Pac. 743; and Simpson v. O'Hara, 70 Or. 261, 141 Pac. 158. These two cases were affirmed without an opinion by an equally divided court in Stettler v. O'Hara, 243 U. S. 629, Mr. Justice Brandeis taking no part in the consideration and decision of the cases. In Bunting v. Oregon, 243 U. S. 426, the United States Supreme Court sustained a wage-fixing statute. The statute limited the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment, to ten hours a day, with a proviso requiring such employees, if they worked more than ten hours a day, to accept for the three additional hours permitted not less than fifty per cent more than their usual wage.

By Act of September 19, 1918 (40 Stat. 960, c. 174), Congress provided for the fixing of minimum wages for women and children in the District of Columbia. The statute was declared unconstitutional on the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the fifth amendment of the constitution of the [fol. 50] United States. Adkins v. Children's Hospital, 261 U. S. 525. Mr. Chief Justice Taft, dissenting, said:

"The boundary of the police power beyond which its exercise becomes an invasion of the guaranty of liberty under the Fifth and Fourteenth Amendments to the Constitution is not easy to mark. Our Court has been laboriously engaged in pricking out a line in successive cases. We must be careful, it seems to me, to follow that line as well as we can and not to depart from it by suggesting a distinction that is formal rather than real.

"Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full levee of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. Now, I agree that it is a disputable question in the field of political economy how far a statu-

tory requirement of maximum hours or minimum wages may be a useful remedy for these evils, and whether it may not make the case of the oppressed employee worse than it was before. But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound.

"Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.

"The right of the legislature under the Fifth and Fourteenth Amendments to limit the hours of employment on the score of the health of the employee, it seems to me, has been firmly established. As to that, one would think, the line had been pricked out so that it has become a well formulated rule. In Holden v. Hardy, 169 U. S. 366, it was applied to miners and rested on the unfavorable environment of employment in mining and smelting. In Lochner v. New York, 198 U. S. 45, it was held that restricting those employed in bakeries to ten hours a day was an arbitrary and invalid interference with the liberty of contract secured by the Fourteenth Amendment. Then followed a number of cases beginning with Muller v. Oregon, 208 U. S. 412, sustaining the validity of a limit on maximum hours of labor for women to which I shall hereafter allude, and following these cases came Bunting v. Oregon, 243 U. S. 426. In that case this Court sustained a law limiting the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment to ten hours a day with a proviso as to further hours to which I shall hereafter advert. The law covered the whole field of industrial employment and certainly covered the case of persons employed in bakeries. Yet the opinion in the Bunting Case does not mention the Lochner Case. No one [fol. 51] can suggest any constitutional distinction between

employment in a bakery and one in any other kind of a manufacturing establishment which should make a limit of hours in the one invalid, and the same limit in the other permissible. It is impossible for me to reconcile the Bunting Case and the Lochner Case and I have always supposed that the Lochner Case was thus overruled sub silentio. Yet the opinion of the Court herein in support of its conclusion quotes from the opinion in the Lochner Case as one which has been sometimes distinguished but never overruled. Certainly there was no attempt to distinguish it in the Bunting Case.

However, the opinion herein does not overrule the Bunting Case in express terms, and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum of hours in the limiting of liberty to contract. I regret to be at variance with the Court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand.

"If it be said that long hours of labor have a more direct effect upon the health of the employee than the low wage, there is very respectable authority from close observers, disclosed in the record and in the literature on the subject quoted at length in the briefs, that they are equally harmful in this regard. Congress took this view and we can not say it was not warranted in so doing.

"With deference to the very able opinion of the Court and my brethren who concur in it, it appears to me to exaggerate the importance of the wage term of the contract of employment as more inviolate than its other terms. Its conclusion seems influenced by the fear that the concession of the power to impose a minimum wage must carry with it a concession of the power to fix a maximum wage. This, I submit, is a non sequitur. A line of distinction like the one under discussion in this case is, as the opinion elsewhere admits, a matter of degree and practical experience and not of pure logic. Certainly the wide difference between prescribing a minimum wage and a maximum wage could as a matter of degree and experience be easily affirmed.

"Moreover, there are decisions by this Court which have sustained legislative limitations in respect to the wage term in contracts of employment. In McLean v. Arkansas, 211 U. S. 539, it was held within legislative power to make it unlawful to estimate the graduated pay of miners by weight after screening the coal. In Knoxville Iron Co. v. Harbison, 183 U. S. 13, it was held that store orders issued for wages must be redeemable in cash. In Patterson v. Bark Eudora, 190 U. S. 169, a law forbidding the payment of wages in advance was held valid. A like case is Strathearn S. S. Co. v. Dillon, 252 U. S. 348. While these did not impose a minimum on wages, they did take away from the employee the freedom to agree as to how they should be fixed, in what medium they should be paid, and when they should be paid, all features that might affect the amount or the mode of enjoyment of them. The first two really rested on the advantage the employer had in dealing with the employee. The third was deemed a proper curtailment of a sailor's right of contract in his own inter- [fol. 52] est because of his proneness to squander his wages in port before sailing. In Bunting v. Oregon, supra, employees in a mill, factory or manufacturing establishment were required if they worked over ten hours a day to accept for the three additional hours permitted not less than fifty per cent. more than their usual wage. This was sustained as a mild penalty imposed on the employer to enforce the limitation as to hours; but it necessarily curtailed the employee's freedom to contract to work for the wages he saw fit to accept during those three hours. I do not feel, therefore, that either on the basis of reason, experience or authority, the boundary of the police power should be drawn to include maximum hours and exclude a minimum wage.

"Without, however, expressing an opinion that a minimum wage limitation can be enacted for adult men, it is enough to say that the case before us involves only the application of the minimum wage to women. If I am right in thinking that the legislature can find as much support in experience for the view that a sweating wage has as great and as direct a tendency to bring about an injury to the health and morals of workers, as for the view that long hours injure their health, then I respectfully submit that Muller v. Oregon, 208 U. S. 412, controls this case. The

law which was there sustained forbade the employment of any female in any mechanical establishment or factory or laundry for more than ten hours. This covered a pretty wide field in women's work and it would not seem that any sound distinction between that case and this can be built up on the fact that the law before us applies to all occupations of women with power in the board to make certain exceptions. Mr. Justice Brewer, who spoke for the Court in Muller v. Oregon, based its conclusion on the natural limit to women's physical strength and the likelihood that long hours would therefore injure her health, and we have had since a series of cases which may be said to have established a rule of decision. Riley v. Massachusetts, 232 U. S. 671; Miller v. Wilson, 236 U. S. 373; Bosley v. McLaughlin, 236 U. S. 385. The cases covered restrictions in wide and varying fields of employment and in the later cases it will be found that the objection to the particular law was based not on the ground that it had general application but because it left out some employments.

"I am not sure from a reading of the opinion whether the Court thinks the authority of Muller v. Oregon is shaken by the adoption of the Nineteenth Amendment. The Nineteenth Amendment did not change the physical strength or limitations of women upon which the decision in Muller v. Oregon rests. The Amendment did give women political power and makes more certain that legislative provisions for their protection will be in accord with their interests as they see them. But I don't think we are warranted in varying constitutional construction based on physical differences between men and women, because of the Amendment.

"But for my inability to agree with some general observations in the forcible opinion of Mr. Justice Holmes [fol. 53] who follows me, I should be silent and merely record my concurrence in what he says. It is perhaps wiser for me, however, in a case of this importance, separately to give my reasons for dissenting."

Mr. Justice Holmes' dissenting opinion reads, in part, as follows:

"The question in this case is the broad one, Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special

circumstances, or whether we must say that Congress has no power to meddle with the matter at all. To me, notwithstanding the deference due to the prevailing judgment of the Court, the power of Congress seems absolutely free from doubt. The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one would deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States, and of those governments from which we have learned our greatest lessons. When so many intelligent persons, who have studied the matter more than any of us can, have thought that the means are effective and are worth the price, it seems to me impossible to deny that the belief reasonably may be held by reasonable men. If the law encountered no other objection than that the means bore no relation to the end or that they cost too much I do not suppose that anyone would venture to say that it was bad. I agree, of course, that a law answering the foregoing requirements might be invalidated by specific provisions of the Constitution. For instance it might take private property without just compensation. But in the present instance the only objection that can be urged is found within the vague contours of the Fifth Amendment, prohibiting the depriving any person of liberty or property without due process of law. To that I turn.

"The earlier decisions upon the same words in the Fourteenth Amendment began within our memory and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts. Without enumerating all the restrictive laws that have been upheld I will mention a few that seem to me to have interfered with liberty of contract quite as seriously and directly as the one before us. Usury laws prohibit contracts by which a man receives more than so much interest for the money that he lends. Statutes of frauds restrict many contracts to certain forms. Some Sunday laws prohibit practically all contracts during one-

seventh of our whole life. Insurance rates may be regulated. German Alliance Insurance Co. v. Lewis, 233 U. S. 389. (I concurred in that decision without regard to the [fol. 54] public interest with which insurance was said to be clothed. It seemed to me that the principle was general.) Contracts may be forced upon the companies. National Union Fire Insurance Co. v. Wanberg, 260 U. S. 71. Employers of miners may be required to pay for coal by weight before screening. McLean v. Arkansas, 211 U. S. 539. Employers generally may be required to redeem in cash store orders accepted by their employees in payment. Knoxville Iron Co. v. Harbison, 183 U. S. 13. Payment of sailors in advance may be forbidden. Patterson v. Bark Eudora, 190 U. S. 169. The size of a loaf of bread may be established. Schmidinger v. Chicago, 226 U. S. 578. The responsibility of employers to their employees may be profoundly modified. New York Central R. R. Co. v. White, 243 U. S. 188. Arizona Employers Liability Cases, 250 U. S. 400. Finally women's hours of labor may be fixed; Muller v. Oregon, 208 U. S. 412; Riley v. Massachusetts, 232 U. S. 671, 679; Hawley v. Walker, 232 U. S. 718; Miller v. Wilson, 236 U. S. 373; Bosley v. McLaughlin, 236 U. S. 385; and the principle was extended to men with the allowance of a limited overtime to be paid for 'at the rate of time and one-half of the regular wage,' in Bunting v. Oregon, 243 U. S. 426.

"I confess that I do not understand the principle on which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. I fully assent to the proposition that here as elsewhere the distinctions of the law are distinctions of degree, but I perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate. Muller v. Oregon, I take it, is as good law today as it was in 1908. It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account. I should not hesitate to take them into account if I thought it necessary to sustain this act. Quong Wing v. Kirkendall, 223 U. S. 59, 63. But after Bunting v. Oregon, 243 U. S. 426, I had supposed

that it was not necessary, and that Lochner v. New York, 198 U. S. 45, would be allowed a deserved repose.

"This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been upheld."

Respondent insists that the foregoing decision of the United States Supreme Court is controlling and that the judgment should be affirmed. Let us bear in mind that [fol. 55] Adkins v. Children's Hospital, 261 U. S. 525, was based upon an act of Congress passed for the District of Columbia. In O'Gorman & Young v. Hartford Fire Insurance Co., 282 U. S. 249, the United States Supreme Court held that the business of insurance is so far affected with the public interest that the state may regulate the rates and likewise the relations of those engaged in business; that a state statute dealing with a subject clearly within the police power can not be declared void upon the ground that the specific method of regulation prescribed by it is unreasonable, in the absence of any factual foundation in the record to overcome the presumption of constitutionality. The court said:

"The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the State indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states needs no citation of sustaining authority. The police power of a state was not given to the federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers. It is true that the employer and the employee are deprived to a certain extent of their liberty to contract by the minimum wage law. However, if the de- [fol. 56] privation is with due process, if it corrects a known and stated public evil, if it promotes the public welfare—that is, if it is a reasonable exercise of the police power—it is constitutional and it is a proper exercise of legislative power. In Nebbia v. New York, 291 U. S. 502, it was held that one may be compelled to pay a greater sum than that which may be asked because at another end of the industrial scale is found one who may not be paid what his product is worth and who may be unable to bargain freely with those who possess the marketing facilities. The court said:

"The law-making bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies. The consequent interference with private property and freedom of contract has not availed with the courts to set these enactments aside as denying due process. Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained. If the law-making body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the legislature to be fair to those engaged in the industry and to the consuming public. And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon

the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

The legal duty placed upon the employer by our minimum wage law is that he must pay women in his employ in wages a sum found to be necessary for the maintenance of the health as well as the morals of the employee. If the wages paid equal or are in excess of the cost of the main- [fol. 57] tenance of a normal health standard, the state's concern in the matter ceases. If the employer pays less than the amount found to be the minimum cost of the maintenance of the normal health standard by virtue of his more secure and powerful economic position, the transaction savors of exploitation. Restraints upon the liberty to contract have been declared constitutional in many cases, as cited in the dissenting opinion of Mr. Justice Holmes in Adkins v. Children's Hospital, 261 U. S. 525. The underlying principle in all such cases is the state's right, the state's duty, to interfere in the terms of a contract between private parties when there is an inequality in bargaining power.

"And therefore I take it to be an established rule, that a mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged, and the conveyance absolute. And there is great reason and justice in this rule, for necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them." Vernon v. Bethell, 2 Eden's Chancery Reports 68.

The mere fact that the parties are of full age does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to a contract shall be protected against himself.

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their oper-

atives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

[fol. 58] "It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employes, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. 'The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'" Holden v. Hardy, 169 U. S. 366.

We held in Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore the state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner. If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the con-

trary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. The United States supreme court has not yet held that a state statute such as the one in the case at bar [fols. 59-72] is unconstitutional, and until such time—Adkins v. Children's Hospital, 261 U. S. 525, is not controlling—we shall adhere to our holding in the case of Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037; and Spokane Hotel Co. v. Younger, 113 Wash. 359, 194 Pac. 595. It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that in the state of Washington evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist.

The judgment is reversed and the cause remanded with instructions to the trial court to enter judgment in favor of the appellant in an amount equal to the difference between the amount paid and the amount due under the minimum wage law. Millard, C. J.

Concurring: Holcomb, J. Main, J. Blake, J. Beals, J.

[fols. 73 & 74] In Supreme Court of Washington

[Title omitted]

Order Denying Petition for Rehearing—Filed May 20, 1936

The court having considered respondent's petition for a rehearing herein;

It is Ordered that the petition be and it hereby is denied.

It is Further Ordered that the going down of the remittitur be withheld for thirty days to permit respondent to obtain a review of the decision of this court by the Supreme Court of the United States.

Dated this 20th day of May, 1936.

By the Court:

William J. Millard, Chief Justice.

[File endorsement omitted.]

[fol. 75] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING MOTION TO RECONSIDER ORDER DENYING PETITION FOR REHEARING—Filed June 22, 1936

The court having considered respondent's request for reconsideration of the order denying its petition for rehearing herein;

It is Ordered that the request be and it hereby is denied;

And it is Further Ordered that the sending down of the remittitur be delayed for a period of thirty days to permit the petitioner to prosecute its appeal to the Supreme Court of the United States.

Dated this 22d day of June, 1936.

By the Court:

William J. Millard, Chief Justice.

[File endorsement omitted.]

[fol. 76] IN SUPREME COURT OF WASHINGTON

[Title omitted]

NOTICE OF ASSOCIATION OF COUNSEL—Filed June 26, 1936

To the Above Named Appellants, and to C. B. Conner, Esq., Their Attorney:

Please Take Notice that the firm of Roberts and Skell, Attorneys at law, of Seattle, Washington, have become associated with the undersigned as counsel for the Respondent in all further matter pertaining to this cause, both in the Supreme Court of the State of Washington and in the Supreme Court of the United States.

Dated at Wenatchee, Washington, this 23 day of June, 1936.

Crollard & O'Connor, by Fred M. Crollard, Attorneys for Respondent.

Service of the within Notice and a true copy thereof acknowledged this 25th day of June, 1936.

C. B. Conner, by R. B., Attorney for Appellants.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF WASHINGTON

Chelan County No. 12215

No. 26038

ERNEST PARRISH and ELSIE PARRISH, His Wife, Appellants,

vs.

WEST COAST HOTEL COMPANY, a Corporation, Respondent

JUDGMENT

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Chelan County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 9th day of July, A. D. 1936, on motion of C. B. Conner, Esquire, of counsel for Appellants, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is hereby reversed and the cause remanded to the trial court to enter judgment in favor of appellant in an amount equal to the difference between the amount paid and the amount due under the minimum wage law and that the said Ernest Parrish and Elsie Parrish his wife have and recover of and from the said West Coast Hotel Company, a corporation, the costs of this action taxed and allowed at Eighty and 55/100 ($80.55) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 78] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON TO THE SUPREME COURT OF THE UNITED STATES—Filed July 9, 1936

To the Hon. William J. Millard, Chief Justice of the Supreme Court of the State of Washington:

West Coast Hotel Company, a corporation, your petitioner, respectfully shows:

I

That the petitioner is the respondent in the above entitled cause.

II

The above named appellants heretofore filed a complaint in the Superior Court of the State of Washington for Chelan County for the recovery of wages representing the difference between the wage actually agreed upon and paid and the minimum wages specified by the Industrial Welfare Commission of the State of Washington under the authority granted by Remington 7623 et seq., being Chapter 174 of the laws of Washington, 1913, as the same appears on page 602 of said volume, and that upon said cause coming duly on for trial the court did find in favor of your petitioner upon the ground and for the rea-
[fol. 79] son that the same was void under the Constitution of the United States.

III

An appeal from said judgment to the Supreme Court of the State of Washington was reversed by said Supreme Court of the State of Washington on the 2nd day of April, 1936, and thereafter your petitioner applied for a rehearing, which was denied by said court on the 21st day of May, 1936, and your petitioner thereafter moved the court to reconsider such denial and the same was refused on the 22nd day of June, 1936.

IV

In said cause there is drawn in question the validity of a statute of the State of Washington, on the ground of its being repugnant to the United States, and the decision is in favor of its validity, in that it is held that the state minimum wage law, being Remington's Revised Statutes of Washington, section 7623 et seq. and Chapter 174 of the Laws of 1913, being entitled "An Act to protect the lives, health, morals of women and minors, workers, establishing an industrial welfare commission for women and minors, prescribing its powers and duties, and providing for the fixing of minimum wages and the standard condition of labor for such workers and providing penalties for violation of the same, and making an appropriation therefor", for the reason that the same is in violation of section 1 of Amendment XIV of the Federal Constitution in that it is an unconstitutional interference with the freedom of contract guaranteed by the provisions of the Federal Constitution cited.

Wherefore, petitioner prays for the allowance of an appeal from said Supreme Court of the State of Washington to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Wash- [fol. 80] ington may be examined and reversed and also prays that a transcript of the record, proceedings and papers in the case, duly authenticated by the clerk of the Supreme Court of the State of Washington, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner, desiring the appeal to be a supersedeas, prays an order touching the security to be required of it, and the approval of such bond as required in this case. The errors upon which your petitioner claims to be entitled to an appeal are those above indicated and more fully set out in the Assignment of Errors filed herewith.

Dated this 8th day of July, 1936.

Crollard & O'Connor, Roberts & Skeel, John W. Roberts, Attorneys for Proposed Appellants.

[fol 81] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 9, 1936

The petitioner and appellant assigns the following errors in the record and proceedings in this cause:

1. That the court erred in ruling that Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes (1932) section 7623-7640 inclusive, entitled "Minimum Wages for Women", approved March 24, 1913, was not unconstitutional and void and repugnant to section 1 of Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women in that it deprives petitioner of the right to contract without due process of law.

2. The statute of the State of Washington, to-wit, Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes (1932), sections 7623 to 7640 inclusive, entitled "Minimum Wages for Women, approved March 24, 1913", is unconstitutional and void as repugnant to section 1 of Article XIV of the Constitution of the United States in that it impairs the freedom of contract of the petitioner, and that the Supreme Court of the State of Washington erred in holding the same valid.

3. The Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Wash- [fols. 82-92] ington was a valid or constitutional regulation.

Wherefore, on account of the errors hereinabove assigned, the petitioner prays that the said judgment of the Supreme Court of the State of Washington, dated the 9th day of July, 1936, in the above entitled cause be reversed and judgment be rendered in favor of the petitioner.

Dated this 9th day of July, 1936.

Crollard & O'Connor, Roberts & Skeel, John W. Roberts, Attorneys for Appellant.

[fol. 93] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 9, 1936

The petition of West Coast Hotel Company, a corporation, the appellant in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from a judgment of the Supreme Court of the State of Washington having been filed with the clerk of this court and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated July 9, 1936, of the Supreme Court of the State of Washington, as prayed in said petition, and that the clerk of the Supreme Court of the State of Washington [fol. 94] shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is Further Ordered that the said appellant shall give a good and sufficient bond in the sum of $1,000.00 that said appellant shall prosecute said appeal to effect and answer all costs if it fails to make its plea good.

This appeal shall operate as a supersedeas.

Dated this 9th day of July, 1936.

William J. Millard, Chief Justice of the Supreme Court of the State of Washington.

[fols. 95-98] Bond on appeal for $1,000.00, approved and filed July 9, 1936, omitted in printing.

[fols. 99-102] Citation, in usual form, showing service on C. B. Conner, filed July 22, 1936, omitted in printing.

[fol. 103] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT UPON APPEAL—Filed July 22, 1936

To the Hon. Benj. T. Hart, Clerk of the Supreme Court of the State of Washington:

You will please prepare in accordance with Rule 10 of the Rules of the Supreme Court of the United States, a transcript on appeal in the above appeal consisting of the following parts of your files and record on the above entitled cause:

1. Transcript of record of Superior Court, Chelan County.
2. Supplemental transcript of record of Superior Court of Chelan County. (Find-s of fact and conclusions of law of Superior Court of the State of Washington for Chelan County.)
3. Statement of facts, including all incorporated exhibits.
4. Opinion of the Supreme Court of the State of Washington.
5. Petition for rehearing.
6. Order denying rehearing.
7. Motion to reconsider denial of rehearing.
8. Order denying motion to reconsider denial of rehearing.
9. Notice of association of counsel.
10. Judgment of the Court.
11. Petition for appeal.

[fols. 104–111] 12. Assignment of errors.

13. Statement as to jurisdiction.
14. Order allowing appeal and fixing bond.
15. Bond upon appeal.
16. Citation. (Original.)

17. Statement directing attention to the United States Court Rule 12. (Original.)
18. Proof of service of papers required by Rule 12. (Original.)
19. Præcipe for transcript on appeal and proof of service thereon.
20. Clerk's Certificate.

Dated this 15th day of July, 1936.

John W. Roberts, Crollard & O'Connor, Roberts and Skeel, Attorneys for Appellant.

Acknowledgement of Service and Stipulation

The undersigned, attorney for the Appellees, hereby acknowledge due and proper service of the above præcipe and does hereby stipulate and agree that the papers listed are all that are necessary for the completion of the records upon appeal and that the Clerk may immediately proceed with the preparation of such records.

Dated this 18 day of July, 1936.

C. B. Conner, Attorney for Appellee.

Acknowledgement of Service

The undersigned, attorney for the Appellees above named does hereby acknowledge due and proper service of the foregoing præcipe.

Dated this 18 day of July, 1936.

C. B. Conner, Attorney for Appellee.

[fol. 112] [File endorsement omitted]

In Supreme Court of the United States

[Title omitted]

Agreed Narrative Statement of Evidence and Opinion of the Superior Court of Chelan County—Filed August 10, 1936

Be it Remembered that on the 17th day of October, 1935, in the Superior Court of the State of Washington for Chelan County the above entitled cause came on for trial

before the Hon. W. O. Parr, Judge of said court, the plaintiffs, appellees above named, being represented by their attorney of record, C. B. Conner, and the appellant above named appearing by its attorneys of record, Crollard and O'Connor by Fred. M. Crollard.

Thereupon both sides having announced that they were ready for trial, the following proceedings were had and testimony given.

ELSIE PARRISH, being called as a witness on her own behalf testified as follows:

I reside in Wenatchee, Washington. I have been employed by the West Coast Hotel Company and at all times [fol. 113] during said employment I was over the age of 21 years. I started to work for the hotel in the first part of August, 1933 (4). I was doing general maid service such as making beds, cleaning, dusting, etc., which is generally known as chamber maid work. All of the work was done at the Cascadian Hotel, Wenatchee, Chelan County, Washington.

I also worked in 1934 and 1935 and received a total of $481.95 for my services. The balance of the money earned has not been paid to me (5).

At the time of my discharge the hotel company owed me $216.19. After my discharge I made demand for this balance, but it was not paid to me, and the sum of $17.00 was tendered to me in full, which I refused to accept.

Upon cross-examination by Mr. Crollard, attorney for the hotel company, this witness testified as follows:

I was discharged on May 13, 1935. I could not say how many hours I had worked in May, 1935, but I think it would be near 54. I could not say if I had been paid to the 30th of April. I know that I received checks on the 5th and 20th of each month (6). I was paid regularly on the 5th and 20th, and had been paid to the last of April, but did not get my pay for the last two weeks. When I was discharged I was offered $17.00 in full by Mr. Abel, manager of the hotel, and I did not accept it. I then told him that I was entitled to $216.19, which sum I demanded (7). I figured this amount rapidly as I had been keeping a record of my own time for each hour I had worked. I did not

begin keeping time until after I had worked in the hotel several months.

I could not say what rate of pay I received when I first started to work for the hotel company. I cannot state from memory the number of hours I worked during each month, [fol. 114] but the record is substantially correct as to such hours, and in August, 1933 I worked 24½ hours (8). I was paid $5.39 on August 20, 1933 by the hotel company by check which I cashed. Likewise I was paid $5.17 on the 5th of September, 1933, and $17.82 on the 20th of September, 1933. I accepted the checks and made no objection (9).

There was nothing said about wages when I was hired. I was not keeping time at the beginning. After I began to keep my time I tried to figure out what I was getting. On October 5 and 20, 1933, I received and cashed the hotel company's checks for $12.00 and $7.75 respectively. They were given me for the work done during October, 1933, and I accepted them. It was March 16, 1934, that I started keeping my record. I did not do any work for the hotel company during November and December, 1933 and January, 1934, but came back to work in February, 1934 (10). Thereafter I regularly received defendant's checks on the 5th and 20th of each month for the balance of the year through December 20, 1934. I cashed the checks which were given to me by the hotel company in payment for my services between the dates of the checks. I did not object to any of the checks on the ground that it was not the right amount, but accepted and cashed them (11).

Through January 5, 1935, to May 5, 1935, I received the payroll checks on the 5th and 20th of each month and accepted them in payment of my services for the period shown on the checks. I was tendered $17.00 at the time of my discharge and I did not accept it (12).

I kept track of the checks I received and put it down in my time book. I had in mind that I should have been paid the state wage and that it would be paid. I did not put [fol. 115] down in my record the amount I should have received. I never made any demand upon the hotel company or any of its agents for the state wage until my discharge. There was nothing ever said about wages. I took what they gave me because I needed the work so badly, and I figured the defendant would pay what was right * * * the state wage. I had the state wage in mind all of the while * * * at least a short time after I began working

there. There was no reason why I should call it to the defendant's attention until the present time (13).

On Redirect Examination by the appellees' attorney she testified as follows:

The question of whether or not the checks were in full for my services was never presented when I received the checks. There was no conversation between myself and the hotel officers until my discharge. When I was discharged I went to the counter as usual for my check. The housekeeper had told me that I was discharged and to get my check. Mr. Abel, the manager, was not there, and a clerk offered me the $17.00 check in full which I refused: I saw Mr. Abel a few days later and told him I did not take the $17.00 check and I have never received it (14).

It was then by stipulation of counsel agreed that the printed copy of Order No. 23 of the Industrial Welfare Committee of Washington might be admitted as the duly adopted act of the said committee, a printed copy of the same being attached to this statement and incorporated at this point (15).

Roy W. Clark, called as a witness on behalf of the defendant and appellant, West Coast Hotel Company, testified as follows:

During 1933 and part of 1934 I was manager of the Cascadian Hotel in Wenatchee, Washington. I am acquainted with Mrs. Parrish, who was employed as a chamber maid [fol. 116] at the hotel. She received the same pay all other maids received at that time—22½ cents per hour. Later this was raised to 25 cents an hour (16). She was paid regularly twice a month. She never objected to any check or made any claim that the checks were not in the right amount. I left the Cascadian in September or October, 1934 and was succeeded by Mr. Abel.

Upon Cross-Examination by Mr. Conner, attorney for plaintiffs and appellees, this witness testified as follows:

I knew at the time that I was manager of the Cascadian Hotel that the minimum wage law was in effect, and that

the minimum wage for chamber maid work had been fixed at $14.50 per week (18).

WILLARD ABEL, called as a witness on behalf of the defendant and appellant, West Coast Hotel Company, on Direct Examination testified as follows:

I am now and have been for about one year manager of the Cascadian Hotel, succeeding Mr. Clark, who has just testified. Mrs. Parrish was employed during that period at the hotel at an hourly wage of 25 cents per hour. She was discharged in May, 1935, and there was owing to her at that time $17.00. That amount was tendered to her at that time and she refused it.

On Cross-Examination by Mr. Connor, attorney for the plaintiffs and appellees, this witness testified as follows:

I knew that the statutory wage for Mrs. Parrish's services was $14.50 during this period, and at the time she was tendered the $17.00. It is the formal procedure of the company at all times when an employee is discharged to pay off in full and take a receipt.

Upon introduction of the above testimony both parties rested and the attorneys for the defendant hotel company (appellant here) challenged the sufficiency of the evidence [fol. 117] to justify any recovery as showing an employment at 22½ cents and 25 cents an hour, and that the minimum wage statute, being Chapter 174 of the laws of Washington, 1913, as amended, was unconstitutional in that it was in conflict with the Constitution of the United States in that it violated the Fourteenth Amendment thereof.

Whereupon the court orally announced its decision as follows:

OPINION

Hon. W. O. PARR, Judge:

Well, we will suppose this: Suppose that these two cases (Stettler v. O'Hara, 69 Ore. 519, and Simpson v. O'Hara, 70 Ore. 261) did decide, definitely, that the law

was constitutional, and that the United States Court had at that time affirmed it, and wrote an opinion, affirming it; and then suppose, later, exactly the same question comes before them, and they arrive at a contrary conclusion. What would be the law?

In other words, the latest pronouncement of the highest court of the land IS the law of the land, until it is reversed, as I understand it; and, even though the court in this state has reached a conclusion that the law is constitutional, if the court of the United States has reached a different conclusion that, of course, disposes of the matter.

There can be, in my judgment, no doubt about the similarity between the cases decided by the United States Supreme Court and this case. They are almost exactly on all fours. They held, specifically, that it is unconstitutional to fix, by law, a wage scale for adult persons. One of the members of our own court, in the very recent decision, and the one cited by Mr. Crollard there, specifically made the same statement. That was made subsequent to the United [fol. 118] States decision. He used it to illustrate one of the things which the Legislature could not do; that is, fix a wage for adult persons—anyone.

Now this case, in my judgment, raises the constitutional question. If the law is valid, then I'd say she has the money coming. If the law isn't valid, she doesn't have. There could be no doubt about the fact that her wages were paid her by the hotel company, on the theory that they were paying her all she had coming, and there is no doubt she was so paid, even though she had in her mind that she might have recovered the amount the statute provided. That doesn't change the fact. She received it without complaint, as payment for the work she was doing, which would constitute a binding contract, if such contract could be made.

If the law fixes a minimum wage, then I say she is entitled to her money. If that law is invalid then, of course, she is obliged to accept what she has received from time to time, and paid her as full settlement for what she has done.

It seems to me that the decision of the highest court of the land (Adkins v. Children's Hosp. 261 U. S. 525) settles this question absolutely, and beyond all question, for the time being. I am not inclined to join the Kansas Court in saying that, but for the decision, I should like to do some-

thing else, because I do believe that it is in full accord with the principles on which our order is founded, that it is in accord with both the letter and the spirit of the Constitution; so I believe the decision to be soundly right. Of course, it doesn't make any difference what this court thinks about it, nevertheless that is the view of the Court, not, as I say, joining the Kansas Court in apologizing for following the decision of the highest court of the land.

[fol. 119] I appreciate that this matter is of considerable importance, but it seems to me that it was decided quite a while before this case was started, and in a manner that absolutely controls and binds this court, and all courts of the land.

The Plaintiffs' action will be dismissed.

Mr. Conner: Exception.

Judge Parr: Exception noted.

[fol. 120] ACKNOWLEDGMENT OF SERVICE AND STIPULATION APPROVING STATEMENT OF EVIDENCE AND OPINION OF THE COURT

The undersigned attorney for the appellees above named does hereby expressly acknowledge service this date of a copy of the above entitled document and does hereby expressly stipulate and agree that the same constitutes a true and correct narrative statement of all the evidence submitted in the above entitled cause and all of the evidence necessary for the consideration of the court, and that the same may be so certified by the Chief Justice of the Supreme Court of the State of Washington, or any acting Chief Justice thereof, to be forwarded with the transcript of the case and used in place of the statement of facts heretofore filed with the Supreme Court of the State of Washington.

Dated this — day of August, 1936.

——, Attorney for Appellees.

[fol. 121] CERTIFICATE

The undersigned Chief Justice of the above entitled court does hereby certify that the foregoing is a true and correct narrative statement of the evidence submitted in the above entitled cause as shown by the statement of facts heretofore certified by the Hon. W. O. Parr, Judge of the Superior Court of the State of Washington for Chelan County, the same being all of the evidence considered by this court in its decision and judgment rendered in said cause, and being all of the evidence stipulated by counsel as necessary for the hearing thereof.

Done in Open Court this 10th day of August, 1936.

William J. Millard, Chief Justice.

Presented by: John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Approved by: C. B. Conner, Attorney for Appellees.

[fol. 122] I. W. C. Order No. 23

Department of Labor and Industries

Industrial Welfare Committee of the State of Washington

Olympia, Washington, August 5, 1921.

To Whom It May Concern:

Take Notice: That pursuant to the authority in it vested by Chapter 174 of the Session Laws of the State of Washington for 1913, and pursuant to the recommendations of the Public Housekeeping Conference of representatives of employers and employees in the different occupations in the Public Housekeeping Industry throughout the state, together with representatives of the public, duly held after investigation of such industry, which said recommendations were duly approved by said Industrial Welfare Committee;

[The term Public Housekeeping shall include the work of: linen room girls, chambermaids, cleaners, kitchen girls, dishwashers, pantry girls, pantry servers, waitresses, counter girls, bus girls, elevator operators, janitresses, laundry workers (except where a commercial laundry is operated),

and any other occupation which would properly be classified under Public Housekeeping. The establishments shall include: hotels, rooming houses, boarding houses, restaurants, cafes, cafeterias, lunch rooms, tea rooms, apartment houses, hospitals (not nurses), philanthropic institutions, and any other which may be properly classified under this industry.]

The Industrial Welfare Committee for the State of Washington does hereby Order:

(1) That no person, firm, association or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State at a weekly wage rate of less than fourteen dollars and fifty cents ($14.50) per week of forty-eight hours, or at a daily wage rate of less than two dollars and fifty cents ($2.50) per day of eight hours, or at an hourly wage rate of less than thirty-five cents (35c) per hour, such wage rates being the estimate of said Conference of the minimum wage adequate to supply the necessary cost of living and to maintain such employees in health and comfort. (The interpretation of this paragraph affecting the wage rates shall be that the weekly wage rate shall prevail where the employment extends over a period of one week or more; that the daily wage rate shall prevail where employment is for one or more days of eight hours, and the hourly wage rate shall prevail where employment is for less than eight hours in any one day.)

(2) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than six days in any one week: Provided, however, That when a sufficient emergency exists, such as renders it absolutely impossible to secure efficient substitute help, the employees in the Public Housekeeping Industry may be employed for a continuous period of not exceeding ten consecutive days, at the expiration of which ten-day period they shall be given one day's rest. This emergency privilege shall not preclude any such employee from having at least four days' rest in any twenty-eight day period.

(3) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than five hours without a rest period of at least one-half hour; that a schedule of hours be posted in all cases.

(4) That where a special uniform be required it must be furnished and laundered by the employer.

(5) That when meals are furnished to employees the time used in eating may be deducted in arranging the schedule; that if a room be furnished same must be properly heated and sanitary.

(6) That there must be separate toilets for women and a suitable room provided for change of clothing and for eating lunches.

(7) That women shall not be employed as elevator operators after 12:00 midnight.

(8) That women shall not be employed as "bell hops."

(9) That when board is furnished 95 cents per day may be deducted; and for a room furnished $2.00 per week may be deducted; that 20 cents may be deducted for breakfast, 30 cents for lunch and 45 cents for dinner; that in every case there shall be a definite agreement as to whether board and room shall or shall not be furnished; that otherwise the straight wage scale shall prevail.

(10) This Order shall become effective sixty (60) days from the date hereof, or October 4th, 1921, and supersedes all other Orders heretofore issued, covering this Industry.

Industrial Welfare Committee, for the State of Washington. (Seal Industrial Welfare Committee for the State of Washington.)

[fol. 123] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENTAL PRÆCIPE FOR TRANSCRIPT—Filed August 10, 1936

To the Hon. Benjamin T. Hart, Clerk of the Supreme Court of the State of Washington:

You are hereby respectfully requested to include in the transcript to be forwarded to the Supreme Court of the United States in the above entitled cause the Agreed Narrative Statement of Evidence and the Opinion of the Superior Court of the State of Washington for Chelan County, together with this Supplemental Præcipe for Transcript.

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

[fol. 124] The undersigned counsel for appellees does hereby acknowledge receipt of the above supplemental præcipe and does hereby expressly stipulate and agree that the same may be included in the record on appeal.

Dated this 6 day of August, 1936.

C. B. Conner, Attorney for Appellees.

[File endorsement omitted.]

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, DESIGNATION OF PARTS OF RECORD TO BE PRINTED AND ACCEPTANCE OF SERVICE THEREOF—Filed August 17, 1936

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this court in this cause are as follows:

1. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's

Revised Statutes 1932, section- 7623-7640, inclusive, entitled "Minimum Wages for Women", approved March 24, 1913, is unconstitutional and void and repugnant to section 10, Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women in that it deprives appellant of the right to contract without due process of law.

2. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section- 7623-7640, inclusive, entitled "Minimum Wages for Women", approved March 24, 1913; [fol. 127] is unconstitutional and void as repugnant to section 1, Article XIV of the Constitution of the United States, in that it impairs the freedom of contract of the appellant.

3. That the Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Washington was a valid or constitutional regulation.

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Designation of Parts of Record to be Printed

Comes now the appellant in the above entitled cause and respectfully designates the following parts of the record in the above entitled cause to be printed:

1. Transcript of record of the Superior Court of the State of Washington for Chelan County, omitting therefrom motion for new trial, order denying motion for new trial, appeal bond and certificate of clerk (Record 1 to 20).

2. Supplemental transcript of record (findings of fact and conclusions of law) (Record 21-24).

3. Narrative statement of evidence and opinion of the Superior Court of Chelan County (Record 112 to 122).

4. Opinion of the Supreme Court of the State of Washington (Record 47-59).

5. Order denying petition for rehearing (Record 73).

[fol. 128] 6. Order denying motion to reconsider denial of rehearing (Record 75).

7. Notice of association of counsel (Record 76).

8. Judgment of the Supreme Court (Record 77).

9. Petition for appeal (Record 78-80).

10. Assignment of Errors (Record 81-82).

11. Order allowing appeal and fixing bond (Record 93-94).

12. Cost bond (Record 95-98).

13. Original citation (Record 99-100).

14. Original statement directing attention to United States Court Rule 12, and proof of service of papers required by Rule 12 (original) (Record 101-102).

15. Præcipe for transcript on appeal and proof of service thereon (Record 103-104).

16. Supplemental Præcipe for transcript for narrative statement of evidence (Record 123-124).

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Acceptance of Service of Points to be Relied Upon and of Parts of Record to be Printed

I, C. B. Conner, of Wenatchee, Washington, attorney of record for the appellees, hereby acknowledge due and timely service of the above statement of points to be relied upon [fol. 129] and designation of parts of the record to be printed, and agree that the said designation includes all parts of the record material and necessary to a consideration of the case, and hereby expressly waive all right to file a counter designation of parts of the record to be printed.

Dated this 6 day of August, 1936.

C. B. Conner, Attorney for Appellees.

[fol. 130] [File endorsement omitted.]

Endorsed on cover: Enter John W. Roberts. File No. 40,833. Washington Supreme Court. Term No. 293. West Coast Hotel Company, appellant, vs. Ernest Parrish and Elsie Parrish, his wife. Filed August 17, 1936. Term No. 293 O. T. 1936.

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IN THE

SUPREME COURT OF THE STATE OF WASHINGTON

No. 26038

ERNEST PARRISH AND ELSIE PARRISH, HIS WIFE,
Appellants,

vs.

WEST COAST HOTEL COMPANY, A CORPORATION.
Respondent.

AMENDED STATEMENT AS TO JURISDICTION.

Pursuant to Rule 12, paragraph 1 of the Rules of the Supreme Court of the United States, appellant submits this statement showing that the appeal in the above entitled cause is properly within the jurisdiction of the Supreme Court of the United States.

Opinion Below.

The opinion of the Supreme Court of the State of Washington is reported at this time in the Advance Sheets of Washington Decisions, volume 85, No. 16, published at Olympia, Washington, on April 15, 1936, at page 517, being 85 Wash. Dec. 517. Said opinion was filed April 2, 1936 (R. 47). Petition for rehearing was filed by the appel-

lant within thirty days thereafter, to wit, April 26, 1936, and was denied on May 22, 1936 (R. 73). Judgment was entered on July 9, 1936 (R. 77). There is appended hereto as Exhibit "A", a copy of the oral decision of the Superior Court of Chelan County and as Exhibit "B" the opinion of the Supreme Court of the State of Washington being all of the opinions of the courts of the State considering the matter.

Jurisdiction.

The jurisdiction of the Supreme Court of the United States is invoked under section 237 (a) of the United States Judicial Code, as amended by the act of February 13, 1925, January 31, 1928, and April 26, 1928; Title 28 U. S. C. A., sec. 344 (a), 861 (a) and 861 (b).

1.

(*Appeal Timely Taken.*)

The judgment of the Supreme Court of the State of Washington sought to be reversed was entered on July 9, 1936 (R. 77). The time for taking the appeal began to run on the date of such judgment. (See *Puget Sound Power & Light Company* v. *King County,* 264 U. S. 22, where the time for appealing from the judgment of the Supreme Court of the State of Washington is considered). The petition for appeal, accompanied by assignment of errors and statement as to jurisdiction required by Rule 12 (1) of the Supreme Court of the United States, was on the 9th day of July, 1936, presented to the Hon. William J. Millard, Chief Justice of the Supreme Court of the State of Washington, and by him allowed on the date of the presentation of this petition (R. 93).

2.

(*Finalty of Judgment.*)

The judgment forming the basis of the appeal is a final judgment in the sense that it determines the controversy, leaving nothing to be done except the ministerial acts of enforcement. It is one denying the appellant any relief and entering a monetary judgment in favor of the appellees as against the appellant. The final court has entered a final judgment upon the merits (R. 77). The judgment appealed from is final within the meaning of section 237 of the Judicial Code.

Mower v. *Fletcher,* 114 U. S. 127;

Board of Commissioners of Tippecanoe County v. *Lucas, Treasurer,* 93 U. S. 108;

Gulf Refining Company v. *U. S.,* 296 U. S. 125.

3.

(*Judgment of the Highest Court.*)

The judgment of the Supreme Court of the State of Washington is that of the highest court in which, under the laws of the State, such judgment could be had. No further appeal may be had to it or any other court, save the Supreme Court of the United States since the appeal herein is taken from "a highest court of a State in which a decision on the suit could be had."

Constitution of the State of Washington, Article IV, sections 1, 4, and 6, as found in Remington's Revised Statutes of the State of Washington, 1932, volume 1, pages 422, 425, and 428, respectively.

Remington's Revised Statutes of the State of Washington, 1932, volume 4, section 1716, pages 10 and 11; Laws of 1893, page 119; Laws of 1901, page 28, section 1; section 1737, page 72, Laws of 1889, page 130, section 22; section

1740, pages 74 and 75, Laws of 1893, page 131, section 25; and section 1741, page 75, Laws of 1893, page 131, section 26.

4.

(Validity of a State Statute Drawn Into Question and Decision in Favor of Its Validity.)

In this suit the petitioner contended in the court below that a State statute, as applied to the petitioner, was repugnant to and in conflict with section 1, Article XIV of the Constitution of the United States, which states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any persons within its jurisdiction equal protection of the laws." The decision of said Supreme Court of the State of Washington was in favor of the validity of the statute.

(a) Statute.

The statute, the validity of which was drawn into question is Chapter 174, Laws of 1913, page 602, being section 7623, *et seq.*, of Remington's Revised Statutes of Washington (1932, page 657). The pertinent parts of said chapter are as follows:

> "SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.
>
> "SEC. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to

employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

"SEC. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

* * * * * * *

Under Chapter 7, Laws of 1921, page 46, section 82, and page 68, section 134, being Remington's Revised Statutes (1932) Section 10840 and Section 10893 respectively the Industrial Welfare Commission was abolished and its duties assigned to the Industrial Welfare Committee, consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician, and the Supervisor of Women in Industry.

"SEC. 6. It shall be the duty of the Commission to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. * * *

* * * * * * *

"SEC. 9. The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. * * *

"SEC. 10. If, after investigation, the commission shall find that in any occupation, trade or industry, the

wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employes in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employes. The findings and recommendations of the conference shall be made a matter of record for the use of the commission.

"SEC. 11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or it may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occu-

pation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of wages, or under conditions of labor prohibited for women in said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

"SEC. 12. Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employes, the commission may at its discretion reopen the question and re-convene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

"SEC. 13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to any apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

* * * * * * *

"SEC. 18. If any employe shall receive less than the legal minimum wage, except as hereinbefore provided

in section 13, said employe shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account.

"SEC. 19. All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employe shall have the right of appeal to the superior court on questions of law.

* * * * * * *"

(b) **Application of Statute and Nature of the Case.**

In this suit the plaintiff and appellant below, Elsie Parrish, was employed by the defendant as a chamber maid in the hotel which it operates. Her husband was made a party in compliance with the community property laws existing in the State of Washington. The defendant was, at all times involved in the litigation, engaged in the operation of a hotel known as The Cascadian in the City of Wenatchee, Washington.

Mrs. Parrish had been employed as a chamber maid by the hotel company intermittently during a period beginning in August of 1933 and terminating in May, 1935. During the period of her employment Mrs. Parrish had been paid weekly a sum which was less than the $14.50 per week, which had been established by the Industrial Welfare Commission of the State of Washington for women employed in the hotel industry under the authority given to it by Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623, *et seq.* Upon the termination of her employment Mrs. Parrish refused the check for $17.00 tendered by the hotel company and demanded the

difference between the wages she had been receiving and the wages she would have received under the minimum wage established by the Industrial Welfare Commission of Washington. This being refused she brought suit for this amount, expressly relying upon and citing the statute above referred to and the order promulgated by the Commission thereunder.

The hotel company, the petitioner here, answered, in effect, setting up a general denial of the indebtedness and affirmatively pleading that the minimum wage law and the ruling of the Commission thereunder were void under the limitations of section 1 of Article XIV of the Constitution of the United States.

Upon the case coming on for trial the Superior Court of the State of Washington for Chelan County ruled that the plaintiff, Mrs. Parrish, was entitled to judgment for $17.00, being the balance of wages owing to her, and that no further recovery could be had under the terms of Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623, *et seq.*, for the reason that the statute was in conflict with section 1 of Article XIV of the Constitution of the United States, and was, therefore, void.

From this ruling the plaintiff, Mrs. Parrish, took an appeal to the Supreme Court of the State of Washington, wherein, in the opinion heretofore cited in this statement, the lower court was reversed upon the ground that the statute in question did not conflict with section 1 of Article XIV of the Constitution of the United States, and that, therefore, the plaintiff was entitled to judgment in accordance with the prayer of her complaint for the difference between the wages she had been paid and the amount she would have been paid under the minimum wage established by the Industrial Welfare Commission of the State of

Washington. It is from this decision that the petitioner seeks relief.

(c) **Constitutional Question Timely and Sufficiently Raised.**

The constitutionality of the statute was drawn into question by appropriate allegations in the answer of the petitioner, which expressly alleged as an affirmative defense that the statute was in conflict with section 1, Article XIV of the Constitution of the United States (R. 9) the express affirmative defense being as follows:

> "For a further separate and third affirmative defense defendant alleges that the act passed by the legislature of the State of Washington, known as Chapter 174 of the Laws of 1913, purporting to delegate to an Industrial Welfare Commission the power to establish and fix standards of wages for employees of various industries of this state, and particularly the wages to be paid employees of the housekeeping industry (hotels) is a violation of the constitutional rights of this defendant as guaranteed it under Article V and section 1 of Article XIV of the Constitution of the United States and sections 2 and 3 of Article I of the Constitution of the State of Washington."

At the close of the testimony the attorneys for the defendant, appellant here, made a motion to dismiss the case upon the express grounds set forth in the answer (R. 43). The Superior Court of Chelan County granted judgment to the defendant on this ground, the court stating in its decision as follows (R. 44):

> "If the law fixes a minimum wage, then I say she is entitled to her money. If that law is invalid then, of course, she is obligated to accept what she has received from time to time and paid her as full settlement for what she has done.
>
> "It seems to me that the decision of the highest court of the land (Adkins *v.* Children's Hosp., 261 U. S.

525) settles this question absolutely, and beyond all question, for the time being. I am not inclined to join the Kansas Court in saying that, but for the decision, I should like to do something else, because I do believe that it is in full accord with the principles on which our order is founded, that it is in accord with both the letter and the spirit of the Constitutions; so I believe the decision to be soundly right. Of course, it doesn't make any difference what this court thinks about it, nevertheless that is the view of the Court, not, as I say, joining the Kansas Court in apologizing for following the decision of the highest court of the land."

After the above oral decision was given the court made its findings of fact (R. 22) expressly finding as follows:

> "That the contention of the plaintiff that she should have been paid during all of said period at the rate of thirty-five cents per hour or $14.50 per week because of the existence of a so-called minimum wage scale for adult women as fixed by the Industrial Welfare Commission of the State of Washington, is unsound, is not sustained by the evidence and that any attempt to fix the minimum wage for adult women as prescribed by Chapter 174 of the Laws of 1913, and the acts of the Industrial Welfare Commission thereunder, are as to the defendant in this case a violation of its constitutional rights guaranteed it under Amendment V and section 1 of Amendment XIV of the Constitution of the United States."

The attorney for the respondents here (appellants below) filed a notice of appeal (R. 17) in accordance with the rules of practice and the statutes of the State of Washington, appealing to the Supreme Court of that state, in which notice it is recited:

> "Notice is hereby given that the plaintiffs, Elsie Parrish and Ernest Parrish, feeling aggrieved, do hereby appeal to the Supreme Court of the State of Washington from that certain judgment entered in the above entitled cause and court on the 9th day of No-

vember, 1935, and from each and every part thereof wherein and whereby it was adjudged that the minimum wage act, Chapter 174, Laws of 1913, of the State of Washington, and the acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the constitutional rights of the defendant guaranteed it under Amendment V, section 1 of Amendment XIV of the Constitution of the United States, and whereby the plaintiff was awarded the sum of only $17.00 and costs instead of the sum of $216.19 as claimed by the plaintiff."

The notice of appeal above was all that was necessary to bring the constitutional question before the Supreme Court of the State of Washington, and the Supreme Court thereupon gave its decision as shown by the appended copy thereof, and the only point discussed in that decision is the application of section 1, Article XIV of the Constitution of the United States, the same appearing in 85 Wash. Dec. 518. The court there in part stated as follows (R. 48):

"To recover that balance, plaintiff brought this action. The cause was tried to the court, which found that plaintiff was entitled to a recovery of seventeen dollars against defendant. The court further found that chapter 174, Laws of 1913, p. 602, in so far as it applies to adult women, is an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the constitution of the United States.

"'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' Sec. 1, Amendment XIV, Federal Constitution.

"Judgment was entered accordingly. Plaintiff appealed."

The Supreme Court then proceeds to devote the whole opinion to a discussion of the application of section 1 of Article XIV of the Constitution of the United States to the statute in question, the same being the sole subject of appeal.

The opinion and judgment which the State Supreme Court rendered and entered could not have been rendered and entered without denying to petitioner all of the rights asserted by it under the constitutional privileges relied upon and said opinion and judgment cannot be rested upon any independent, non-Federal ground.

It is submitted that the judgment plainly and definitely draws in question the validity of the statute on the ground of its being repugnant to the constitution of the United States, as required by section 237 of the Judicial Code, as amended, and that this appeal comes within the proper jurisdiction of the Court.

Pacific Telephone and Telegraph Company v. *City of Seattle*, 291 U. S. 300;

Morehead v. *New York ex rel. Tipaldo*, — U. S. —, 80 L. Ed. Adv. Op. 921;

Home Insurance Company v. *Dick*, 281 U. S. 397;

Millsap College v. *City of Jackson*, 275 U. S. 129;

Meyer v. *Nebraska*, 262 U. S. 399;

Fairmont Creamery Company v. *Minnesota*, 274 U. S. 1.

The Question Submitted is a Substantial One.

The question which is before the Court here is the right of the State of Washington to establish by law a minimum wage below which the appellant and the respondent cannot freely contract, the contracting respondent being an adult woman. The question is, therefore, a very substantial one, and the right of the appellant which it seeks to protect is the extremely substantial right of freely entering into con-

tracts with its employees for their services and if the State is entitled to deprive the appellant of this right it suffers substantial damage and irreparable harm.

The express question here submitted has been considered by the Supreme Court in the following four cases, which pass upon expressly similar statutes of other States or of the Federal Government:

Morehead v. *New York ex rel. Tipaldo*, — U. S. —, 80 L. Ed. Adv. Op. 921;

Adkins v. *Children's Hospital*, 261 U. S. 525;

John W. Murphy, Attorney General of the State of Arizona, et al., Appellants, v. *A. Sardell*, 269 U. S. 530;

W. H. Donhan, as Prosecuting Attorney for the Sixth Judicial Circuit of the State of Arkansas, et al., Appellants, v. *West Nelson Manufacturing Company*, 273 U. S. 657.

Dated this 22nd day of August, 1936.

JOHN W. ROBERTS,
CROLLARD & O'CONNOR,
ROBERTS & SKEEL,
Attorneys for Petitioner.

Address: 914 Insurance Bldg. Seattle, Washington.

EXHIBIT "A".

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR CHELAN COUNTY.

ERNEST PARRISH, *et ux., Plaintiffs,*

vs.

WEST COAST HOTEL COMPANY, *a Corporation, Defendant.*

No. 12,215

Court's Memo Decision.

Hon. W. O. PARR, *Judge:*

Well, we will suppose this: Suppose that these two cases (Stettler *v.* O'Hara, 69 Ore. 519, and Simpson *v.* O'Hara, 70 Ore. 261) did decide, definitely, that the law was constitutional, and that the United States Court had at that time affirmed it, and wrote an opinion, affirming it; and then suppose, later, exactly the same question comes before them, and they arrive at a contrary conclusion. What would be the law?

In other words, the latest pronouncement of the highest court of the land is the law of the land, until it is reversed, as I understand it; and, even though the court in this State has reached a conclusion that the law is constitutional, if the court of the United States has reached a different conclusion that, of course, disposes of the matter.

There can be, in my judgment, no doubt about the similarity between the cases decided by the United States Supreme Court and this case. They are almost exactly on all fours. They held, specifically, that it is unconstitutional to fix, by law, a wage scale for adult persons. One of the members of our own court, in the very recent decision, and the one cited by Mr. Crollard there, specifically made the same statement. That was made subsequent to the United States decision. He used it to illustrate one of the things

which the Legislature could not do; that is, fix a wage for adult persons—anyone.

Now this case, in my judgment, raises the constitutional question. If the law is valid, then I'd say she has the money coming. If the law isn't valid, she doesn't have. There could be no doubt about the fact that her wages were paid her by the hotel company, on the theory that they were paying her all she had coming, and there is no doubt she was so paid, even though she had in her mind that she might have recovered the amount the statute provided. That doesn't change the fact. She received it without complaint, as payment for the work she was doing, which would constitute a binding contract, if such contract could be made.

If the law fixes a minimum wage, then I say she is entitled to her money. If that law is invalid then, of course, she is obliged to accept what she has received from time to time, and paid her as full settlement for what she has done.

It seems to me that the decision of the highest court of the land (Adkins *v.* Children's Hospital, 261 U. S. 525) settles this question absolutely, and beyond all question, for the time being. I am not inclined to join the Kansas Court in saying that, but for the decision, I should like to do something else, because I do believe that it is in full accord with the principles on which our order is founded; that it is in accord with both the letter and the spirit of the Constitution; so I believe the decision to be soundly right. Of course, it doesn't make any difference what this court thinks about it, nevertheless that is the view of the Court, not, as I say, joining the Kansas Court in apologizing for following the decision of the highest court of the land.

I appreciate that this matter is of considerable importance, but it seems to me that it was decided quite a while before this case was started, and in a manner that absolutely controls and binds this court, and all courts of the land.

The plaintiffs' action will be dismissed.

Mr. Conner: Exception.
Judge Parr: Exception noted.

EXHIBIT "B".

IN THE SUPREME COURT OF THE STATE OF WASHINGTON.

No. 26038.

Department 2.

April 2, 1936.

ERNEST PARRISH *and* ELSIE PARRISH, *His Wife, Appellants,*

vs.

WEST COAST HOTEL COMPANY, *a Corporation, Respondent.*

Appeal from a judgment of the Superior Court for Chelan County, Parr, J., entered November 9, 1935, upon findings in favor of the defendant, in an action for services, tried to the court. Reversed.

C. B. CONNER, for appellant.
CROLLARD & O'CONNER, for respondent.

MILLARD, *C. J.:*

Mindful of the duty of the state to protect women and minors from conditions of labor which have a pernicious effect on their health and morals, the legislature enacted chapter 174, Laws of 1913, p. 602, Rem. Rev. Stat., Sec. 7623 (P. C. Sec. 3526), et seq. The provisions of the act pertinent to this appeal are as follows:

> "SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect." Rem. Rev. Stat., Sec. 7623.
>
> "SECTION 2. It shall be unlawful to employ women or minors in any industry or occupation within the

state of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the state of Washington at wages which are not adequate for their maintenance." Rem. Rev. Stat. Sec. 7624.

"SECTION 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the state of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the state of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women." Rem. Rev. Stat. Sec. 7624½.

From August, 1933 to May, 1935, when she was discharged, plaintiff was in the employ of defendant hotel corporation as a chambermaid at an agreed wage which was less than the minimum weekly wage of fourteen dollars and fifty cents as fixed by the Industrial Welfare Commission under Sec. 3, chapter 174, Laws of 1913, p. 602, Rem. Rev. Stat., Sec. 7624½. If payable at the agreed wage, defendant owes plaintiff a balance of seventeen dollars. If entitled to payment at the minimum rate established by the Industrial Welfare Commission, a balance of $216.19 is due to the plaintiff.

To recover that balance, plaintiff brought this action. The cause was tried to the court, which found that plaintiff was entitled to a recovery of seventeen dollars against defendant. The court further found that chapter 174, Laws of 1913, p. 602, in so far as it applies to adult women, is an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the constitution of the United States.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law, nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, Amendment XIV, Federal Constitution.

Judgment was entered accordingly. Plaintiff appealed.

(1, 2) In *Larsen* v. *Rice*, 100 Wash. 642, 171 Pac. 1037, we held that the minimum wage law (chapter 174, Laws of 1913, p. 602), for women was constitutional. We said:

"It is undoubtedly a general rule that private controversies between individuals sui juris may be compromised by them by mutual agreement, and that the courts will not, where no question of fraud intervenes, relieve from the agreement, even though it be shown that the one gained rights thereby to which he would not otherwise have been entitled and that the other gave up rights to which he was fully entitled; this, on the principle that compromises are favored by the law, since they tend to prevent strife and conduce to peace and to the general welfare of the community. But the controversy here had an added element not found in the ordinary controversy between individuals. It was not wholly of private concern. It was affected with a public interest. The state, having declared that a minimum wage of a certain amount is necessary to a decent maintenance of an employee engaged in the employment in which the respondent was engaged, has an interest in seeing that the fixed compensation is actually paid. The statute making the declaration not only makes contracts of employment for less than the minimum wage void, but has sought to secure its enforcement by making it a penal offense on the part of the employer to pay less than the minimum wage, and by giving to the employee a right of action to recover the difference between the wage actually paid and such minimum wage. The statute was not, therefore, intended solely for the benefit of the individual wage earner. It was believed that the welfare of the public requires that wage earners receive a wage sufficient for their decent maintenance. The statute being thus protective of the public as well as of the wage earner,

> it must follow that any contract of settlement of a controversy arising out of a failure to pay the fixed minimum wage in which the state did not participate is voidable, if not void. Especially must this be so, as here, where the contract of settlement is executory, has been repudiated by one of the parties, the parties can be placed in statu quo, and the wage earner, by carrying out the contract, will not receive the wage to which she is justly entitled."

The Oregon minimum wage law for women—in all essentials the same as our law—was sustained in *Stettler* v. *O'Hara*, 69 Ore. 519, 139 Pac. 743, L. R. A. 1917C 944, Ann. Cas. 1916A 217; and *Simpson* v. *O'Hara*, 70 Ore. 261, 141 Pac. 158. These two cases were affirmed without an opinion by an equally divided court in *Stettler* v. *O'Hara*, 243 U. S. 629, 37 S. Ct. 475, Mr. Justice Brandeis taking no part in the consideration and decision of the cases.

In *Bunting* v. *Oregon*, 243 U. S. 426, 37 S. Ct. 435, Ann. Cas. 1918A 1043, the United States supreme court sustained a wage-fixing statute. The statute limited the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment, to ten hours a day, with a proviso requiring such employees, if they worked more than ten hours a day, to accept for the three additional hours permitted not less than fifty per cent more than their usual wage.

By act of September 19, 1918 (40 Stat. 960, c. 174), Congress provided for the fixing of minimum wages for women and children in the District of Columbia. The statute was declared unconstitutional on the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the fifth amendment of the constitution of the United States. *Adkins* v. *Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238. Mr. Chief Justice Taft, dissenting, said:

> "The boundary of the police power beyond which its exercise becomes an invasion of the guaranty of liberty under the Fifth and Fourteenth Amendments

to the Constitution is not easy to mark. Our Court has been laboriously engaged in pricking out a line in successive cases. We must be careful, it seems to me, to follow that line as well as we can and not to depart from it by suggesting a distinction that is formal rather than real.

"Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. Now, I agree that it is a disputable question in the field of political economy how far a statutory requirement of maximum hours or minimum wages may be a useful remedy for these evils, and whether it may not make the case of the oppressed employee worse than it was before. But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound.

"Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.

"The right of the legislature under the Fifth and Fourteenth Amendments to limit the hours of employment on the score of the health of the employee, it

seems to me, has been firmly established. As to that, one would think, the line had been pricked out so that it has become a well formulated rule. In *Holden* v. *Hardy,* 169 U. S. 366, it was applied to miners and rested on the unfavorable environment of employment in mining and smelting. In *Lochner* v. *New York,* 198 U. S. 45, it was held that restricting those employed in bakeries to ten hours a day was an arbitrary and invalid interference with the liberty of contract secured by the Fourteenth Amendment. Then followed a number of cases beginning with *Muller* v. *Oregon,* 208 U. S. 412, sustaining the validity of a limit on maximum hours of labor for women to which I shall hereafter allude, and following these cases came *Bunting* v. *Oregon,* 243 U. S. 426. In that case, this Court sustained a law limiting the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment to ten hours a day with a proviso as to further hours to which I shall hereafter advert. The law covered the whole field of industrial employment and certainly covered the case of persons employed in bakeries. Yet the opinion in the Bunting case does not mention the Lochner case. No one can suggest any constitutional distinction between employment in a bakery and one in any other kind of a manufacturing establishment which should make a limit of hours in the one invalid, and the same limit in the other permissible. It is impossible for me to reconcile the Bunting case and the Lochner case and I have always supposed that the Lochnerr case was thus overruled *sub silentio.* Yet the opinion of the Court herein in support of its conclusion quotes from the opinion in the Lochner case as one which has been sometimes distinguished but never overruled. Certainly there was no attempt to distinguish it in the Bunting case.

"However, the opinion herein does not overrule the Bunting case in express terms, and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum

of hours in the limiting of liberty to contract. I regret to be at variance with the Court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand.

"If it be said that long hours of labor have a more direct effect upon the health of the employee than the low wage, there is very respectable authority from close observers, disclosed in the record and in the literature on the subject quoted at length in the briefs, that they are equaly harmful in this regard. Congress took this view and we cannot say it was not warranted in so doing.

"With deference to the very able opinion of the Court and my brethren who concur in it, it appears to me to exaggerate the importance of the wage term of the contract of employment as more inviolate than its other terms. Its conclusion seems influenced by the fear that the concession of the power to impose a minimum wage must carry with it a concession of the power to fix a maximum wage. This, I submit, is a *non sequitur*. A line of distinction like the one under discussion in this case is, as the opinion elsewhere admits, a matter of degree and practical experience and not of pure logic. Certainly the wide difference between prescribing a minimum wage and a maximum wage could as a matter of degree and experience be easily affirmed.

"Moreover, there are decisions by this Court which have sustained legislative limitations in respect to the wage term in contracts of employment. In *McLean* v. *Arkansas*, 211 U. S. 539, it was held within legislative power to make it unlawful to estimate the graduated pay of miners by weight after screening the coal. In *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13, it was held that store orders issued for wages must be redeemable in cash. In *Patterson* v. *Bark Eudora*, 190

U. S. 169, a law forbidding the payment of wages in advance was held valid. A like case is *Strathearn S. S. Co.* v. *Dillon,* 252 U. S. 348. While these did not impose a minimum on wages, they did take away from the employee the freedom to agree as to how they should be fixed, in what medium they should be paid, and when they should be paid, all features that might affect the amount or the mode of enjoyment of them. The first two really rested on the advantage the employer had in dealing with the employee. The third was deemed a proper curtailment of a sailor's right of contract in his own interest because of his proneness to squander his wages in port before sailing. In *Bunting* v. *Oregon, supra,* employees in a mill, factory or manufacturing establishment were required if they worked over ten hours a day to accept for the three additional hours permitted not less than fifty per cent more than their usual wage. This was sustained as a mild penalty imposed on the employer to enforce the limitation as to hours; but it necessarily curtailed the employee's freedom to contract to work for the wages he saw fit to accept during those three hours. I do not feel, therefore, that either on the basis of reason, experience or authority, the boundary of the police power should be drawn to include maximum hours and exclude a minimum wage.

"Without, however, expressing an opinion that a minimum wage limitation can be enacted for adult men, it is enough to say that the case before us involves only the application of the minimum wage to women. If I am right in thinking that the legislature can find as much support in experience for the view that a sweating wage has as great and as direct a tendency to bring about an injury to the health and morals of workers, as for the view that long hours injure their health, then I respectfully submit that *Muller* v. *Oregon,* 208 U. S. 412, controls this case. The law which was there sustained forbade the employment of any female in any mechanical establishment or factory or laundry for more than ten hours. This cov-

ered a pretty wide field in women's work and it would not seem that any sound distinction between that case and this can be built up on the fact that the law before us applies to all occupations of women with power in the board to make certain exceptions. Mr. Justice Brewer, who spoke for the Court in *Muller* v. *Oregon*, based its conclusion on the natural limit to women's physical strength and the likelihood that long hours would therefore injure her health, and we have had since a series of cases which may be said to have established a rule of decision. *Riley* v. *Massachusetts*, 232 U. S. 671; *Miller* v. *Wilson*, 236 U. S. 373; Bosley v. *McLaughlin*, 236 U. S. 385. The cases covered restrictions in wide and varying fields of employment and in the later cases it will be found that the objection to the particular law was based not on the ground that it had general application but because it left out some employments.

"I am not sure from a reading of the opinion whether the Court thinks the authority of *Muller* v. *Oregon* is shaken by the adoption of the Nineteenth Amendment. The Nineteenth Amendment did not change the physical strength or limitations of women upon which the decision in *Muller* v. *Oregon* rests. The amendment did give women political power and makes more certain that legislative provisions for their protection will be in accord with their interests as they see them. But I don't think we are warranted in varying constitutional construction based on physical differences between men and women, because of the Amendment.

"But for my inability to agree with some general observations in the forcible opinion of Mr. Justice Holmes who follows me, I should be silent and merely record my concurrence in what he says. It is perhaps wiser for me, however, in a case of this importance, separately to give my reasons for dissenting."

Mr. Justice Holmes' dissenting opinion reads, in part as follows:

> "The question in this case is the broad one, Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special circumstances, or whether we must say that Congress has no power to meddle with the matter at all. To me, notwithstanding the deference due to the prevailing judgment of the Court, the power of Congress seems absolutely free from doubt. The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one would deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States, and of those governments from which we have learned our greatest lessons. When so many intelligent persons, who have studied the matter more than any of us can, have thought that the means are effective and are worth the price, it seems to me impossible to deny that the belief reasonably may be held by reasonable men. If the law encountered no other objection than that the means bore no relation to the end or that they cost too much I do not suppose that anyone would venture to say that it was bad. I agree, of course, that a law answering the foregoing requirements might be invalidated by specific provisions of the Constitution. For instance it might take private property without just compensation. But in the present instance the only objection that can be urged is found within the vague contours of the Fifth Amendment, prohibiting the depriving any person of liberty or property without due process of law. To that I turn.
>
> "The earlier decisions upon the same words in the Fourteenth Amendment began within our memory and went no farther than an unpretentions assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is

merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts. Without enumerating all the restrictive laws that have been upheld I will mention a few that seem to me to have interfered with liberty of contract quite as seriously and directly as the one before us. Usury laws prohibit contracts by which a man receives more than so much interest for the money that he lends. Statutes of frauds restrict many contracts to certain forms. Some Sunday laws prohibit practically all contracts during one-seventh of our whole life. Insurance rates may be regulated. *German Alliance Insurance Co.* v. *Lewis,* 233 U. S. 389. (I concurred in that decision without regard to the public interest with which insurance was said to be clothed. It seemed to me that the principle was general.) Contracts may be forced upon the companies. *National Union Fire Insurance Co.* v. *Wanberg,* 260 U. S. 71. Employers of miners may be required to pay for coal by weight before screening. *McLean* v. *Arkansas,* 211 U. S. 539. Employers generally may be required to redeem in cash store orders accepted by their employees in payment. *Knoxville Iron Co.* v. *Harbison,* 183 U. S. 13. Payment of sailors in advance may be forbidden. *Patterson* v. *Bark Eudora,* 190 U. S. 169. The size of a loaf of bread may be established. *Schmidinger* v. *Chicago,* 226 U. S. 578. The responsibility of employers to their employees may be profoundly modified. *New York Central R. R. Co.* v. *White,* 243 U. S. 188. *Arizona Employers Liability Cases,* 250 U. S. 400. Finally women's hours of labor may be fixed; *Muller* v. *Oregon,* 208 U. S. 412; *Riley* v. *Massachusetts,* 232 U. S. 671, 679; *Hawley* v. *Walker,* 232 U. S. 718; *Miller* v. *Wilson,* 236 U. S. 373; *Bosley* v. *McLaughlin,* 236 U. S. 385; and the principle was extended to men with the allowance of a limited overtime to be paid for 'at the rate of time and one-half of the regular wage,' in *Bunting* v. *Oregon,* 243 U. S. 426.

"I confess that I do not understand the principle on which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. I fully assent to the proposition that here as elsewhere the distinctions of the law are distinctions of degree, but I perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate. *Muller* v. *Oregon*, I take it, is as good law today as it was in 1908. It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take these differences into account. I should not hesitate to take them into account if I thought it necessary to sustain this act. *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 63. But after *Bunting* v. *Oregon*, 243 U. S. 426, I had supposed that it was not necessary, and that *Lochner* v. *New York*, 198 U. S. 45, would be allowed a deserved repose.

"This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been upheld."

Respondent insists that the foregoing decision of the United States supreme court is controlling, and that the judgment should be affirmed. Let us bear in mind that *Adkins* v. *Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, was based upon an act of Congress passed for the District of Columbia.

In *O'Gorman & Young* v. *Hartford Fire Ins. Co.*, 282 U. S. 251, 51 S. Ct. 130, 72 A. L. R. 1163, the United States Supreme Court held that the business of insurance is so

far affected with the public interest that the state may regulate the rates and likewise the relations of those engaged in business; that a state statute dealing with a subject clearly within the police power cannot be declared void upon the ground that the specific method of regulation prescribed by it is unreasonable, in the absence of any factual foundation in the record to overcome the presumption of constitutionality. The court said:

> "The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the state indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states, needs no citation of sustaining authority. The police power of a state was not given to the Federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers. It is true that the employer and the employee are deprived to a certain extent of their liberty to contract by the minimum wage law. However, if the deprivation is with due process, if it corrects a known and stated public evil, if it promotes the public welfare—that is, if it is a reasonable exercise of the police power—it is constitutional and it is a proper exercise of legislative power.

In *Nebbia* v. *New York*, 291 U. S. 502, 54 S. Ct. 505, 89 A. L. R. 1469, it was held that one may be compelled to pay a greater sum than that which may be asked because at another end of the industrial scale is found one who may not be paid what his product is worth and who may be unable to bargain freely with those who possess the marketing facilities. The court said:

> "The law-making bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies. The consequent interference with private property and freedom of contract has not availed with the courts to set these enactments aside as denying due process. Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained. If the law-making body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the legislature to be fair to those engaged in the industry and to the consuming public. And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

The legal duty placed upon the employer by our minimum wage law is that he must pay women in his employ in wages a sum found to be necessary for the maintenance of the health as well as the morals of the employee. If the wages paid equal or are in excess of the cost of the maintenance of a normal health standard, the state's concern in the matter ceases. If the employer pays less than the amount found to be the minimum cost of the maintenance of the normal health standard by virtue of his more secure and powerful economic position, the transaction savors of exploitation.

Restraints upon the liberty to contract have been declared constitutional in many cases, as cited in the dissenting opinion of Mr. Justice Holmes in *Adkins* v. *Children's Hospital,* 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238. The underlying principle in all such cases is the state's right, the state's duty, to interfere in the terms of a contract between private parties when there is an inequality in bargaining power.

> "And therefore I take it to be an established rule, that a mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged, and the conveyance absolute. And there is great reason and justice in this rule, for necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them." *Vernon* v. *Bethell,* 2 Eden's Chancery Reports 68.

The mere fact that the parties are of full age does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to a contract shall be protected against himself.

> "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality,

and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases, self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor who apparently under the statute is the only one liable, his defence is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employes, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. 'The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer.' " *Holden* v. *Hardy,* 169 U. S. 366, 18 S. Ct. 383.

We held in *Larsen* v. *Rice,* 100 Wash. 642, 171 Pac. 1037, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore, the

state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner.

If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the contrary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, p. 602, Rem. Rev. Stat., Sec. 7623 (P. C. Sec. 3256), et seq., is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. The United States supreme court has not yet held that a state statute such as the one in the case at bar is unconstitutional, and until such time—*Adkins* v. *Children's Hospital,* 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, is not controlling—we shall adhere to our holding in the case of *Larsen* v. *Rice,* 100 Wash. 642, 171 Pac. 1037; and *Spokane Hotel Co.* v. *Younger,* 113 Wash. 359, 194 Pac. 595. It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that, in the state of Washington, evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist.

The judgment is reversed, and the cause remanded with instructions to the trial court to enter judgment in favor of the appellant in an amount equal to the difference between the amount paid and the amount due under the minimum wage law.

Holcomb, Main, Blake, and Beals, JJ., concur.

IN THE

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, a [illegible] poration,

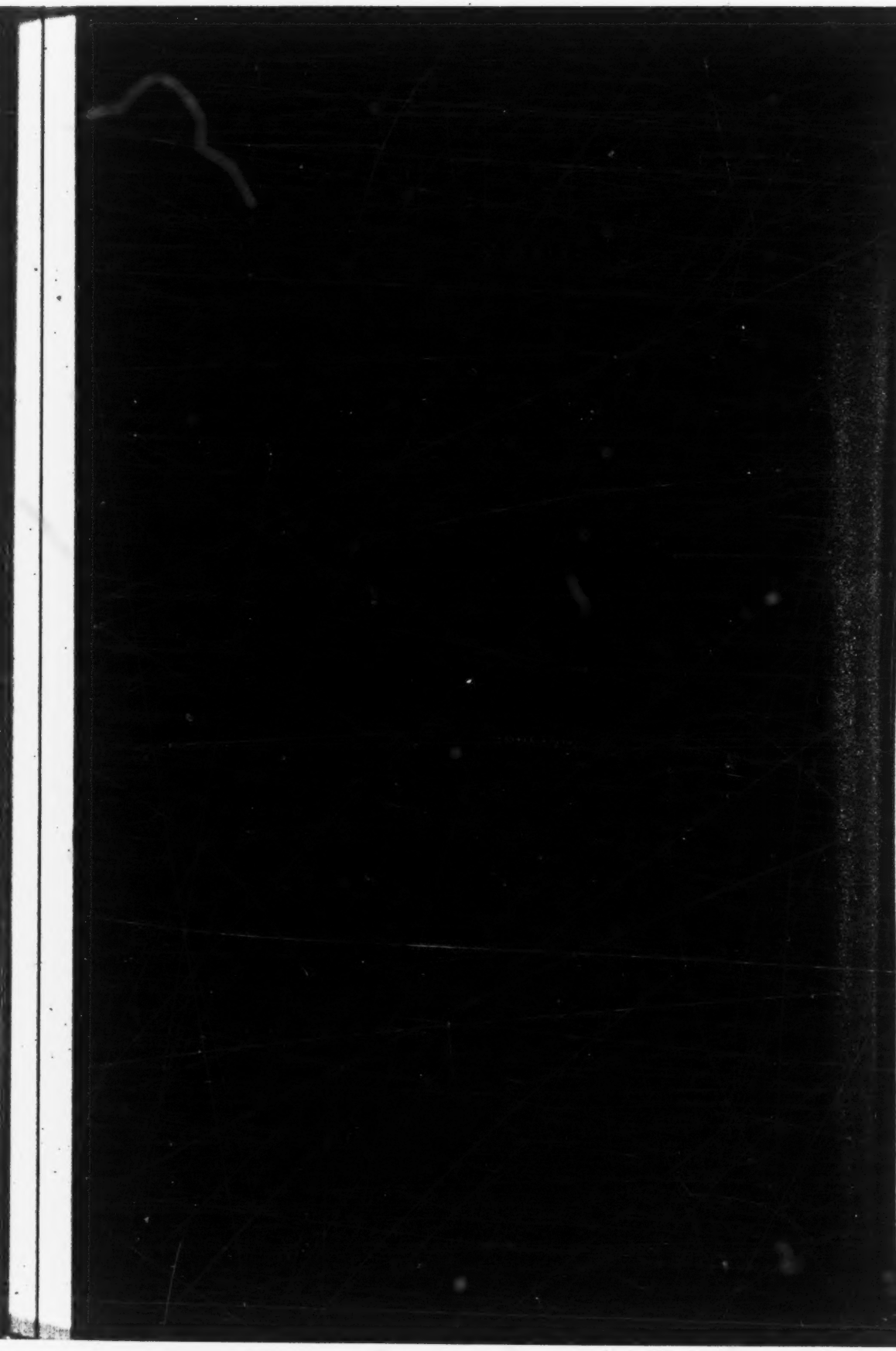
vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,

APPEAL FROM THE SUPREME COURT OF WASHINGTON

BRIEF OF APPELLANT

JOHN W. [illegible]



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REFERENCE TO OFFICIAL REPORT OF THE OPINION DELIVERED IN THE COURT BELOW.

Ernest Parrish and Elsie Parrish, his wife, Appellants, vs. West Coast Hotel Company, Respondent, 85 Wash. Dec. 517, 55 P. (2nd) 1083.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, a corporation,

Appellant,

vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,

Appellees.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

BRIEF OF APPELLANT

STATEMENT OF THE CASE.

Elsie Parrish, an adult woman, was employed intermittently from August of 1933 to May of 1935

as a chamber maid in the hotel of the appellant at Wenatchee, Washington. During this period Elsie Parrish received compensation at a rate which was less than that established by the Industrial Welfare Committee under the terms of Chapter 174 of the Laws of 1913. This statute is quoted in full in the appendix hereto.

Under this statute it is specifically provided as follows:

> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.
>
> "Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women." (Subsequent legislation abolished the Industrial Welfare Commission and substituted an Industrial Welfare Committee consisting of certain designated state officers to act in the place of the original commission.)

Upon the termination of her employment in May of 1935 Elsie Parrish made demand upon her

employer for the difference between the wages she had been paid and the wages which would have been due under the terms of the above described Act. This sum, $216.19, not being paid, Elsie Parrish (being joined by her husband to comply with the community property laws of the State of Washington) brought suit against her employer, the appellant, under the provision of section 18 of the above described Act, which provides that where less than the legal minimum wage has been paid to an employee she may sue for and recover the difference, together with attorney's fees and costs. In addition to the difference between the minimum wage and the wage actually paid the suit was for the sum of $17.00 which was admitted due by the employer, but the acceptance of which had been refused by Elsie Parrish for the reason that it was tendered to her in full of all obligation of the employer to her.

Upon the case being submitted to the Superior Court of the State of Washington for Chelan County the Hon. W. O. Parr, judge of said court, ruled that the case of *Adkins vs. Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, was decisive as to the constitutionality of Chapter 174 of the Laws of 1913, of the State of Washington, and that no recovery could be had by Elsie

Parrish, except for the balance of wages admittedly due her, since the statute under which she sought relief was unconstitutional under the Fourteenth Amendment of the Constitution of the United States.

Elsie Parrish and her husband appealed from this decision to the Supreme Court of the State of Washington, where it was held, in the decision before cited, that the statute, Chapter 174 of the Laws of 1913, was not unconstitutional as being in violation of the Fourteenth Amendment to the Constitution of the United States, and that she was, therefore, entitled to the relief for which she prayed.

From this decision of the Supreme Court of the State of Washington upholding the constitutionality of this statute, this appeal was brought to this court, after having exhausted all remedies within the judicial system of the State of Washington.

(The printed record was not available at the time it became necessary to print this brief to file it within the time limits of the rules of court. For this reason, and because of the simplicity of the facts in the case and the lack of controversy over the facts, reference to the printed record is omitted.)

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON.

1. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623-7640, inclusive, entitled "Minimum Wages for Women," approved March 24, 1913, is unconstitutional and void and repugnant to section 1, Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women, without due process of law, in that it deprives appellant of the right to contract.

2. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623-7640, inclusive, entitled "Minimum Wages for Women," approved March 24, 1913, is unconstitutional and void as repugnant to section 1, Article XIV of the Constitution of the United States, in that it impairs the freedom of contract of the appellant.

3. That the Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Washington was a valid or constitutional regulation.

SUMMARY OF ARGUMENT.

I.

THIS CASE DOES NOT BRING TO THE COURT A NEW POINT OF LAW BUT, ON THE CONTRARY, RESUBMITS A QUESTION WHICH HAS BEEN REPEATEDLY DECIDED IN FAVOR OF THE CONTENTIONS OF THE APPELLANT.

(a) *The disputed statute, Chapter 174 of the Laws of Washington of 1913, as indicated by its title, was passed by the legislature of Washington in the year 1913 prior to any consideration of the principles of minimum wage legislation by the Supreme Court of the United States.*

(b) *Adkins vs. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, and companion cases decided subsequent to the enactment of the Washington legislation, definitely condemn such legislation as the Washington minimum wage law.*

(c) *A comparison of the Washington statute with the minimum wage laws subsequently presented to the Supreme Court of the United States shows that it contains all of the vices in the legislation heretofore condemned.*

II.

THAT THE SUPREME COURT OF THE STATE OF WASHINGTON ERRED IN ATTEMPTING TO DISTINGUISH THIS CASE FROM THE ADKINS CASE ON THE GROUND THAT (1) THE ADKINS CASE PASSED ONLY UPON AN ENACTMENT OF CONGRESS WHICH WOULD NOT HAVE THE POLICE POWER OF A STATE AND (2) THE SUPREME COURT OF THE UNITED STATES WILL NOT DISREGARD THE FINDING OF THE LEGISLATURE OF WASHINGTON AND THE SUPREME COURT THAT SUCH LEGISLATION IS DESIRABLE IN WASHINGTON.

(a) *The power of Congress within the District of Columbia is as broad as that of the state within its own territory.*

(b) *In any event the subsequent cases passing upon the states' legislation are directly in point.*

(c) *The state legislature and the State Supreme Court can not deprive a person of his constitutional rights by merely stating that the enactment is made as an exercise of the police power for the correction of an existing evil.*

ARGUMENT.

THIS CASE DOES NOT BRING TO THE COURT A NEW POINT OF LAW BUT, ON THE CONTRARY, RESUBMITS A QUESTION WHICH HAS BEEN REPEATEDLY DECIDED IN FAVOR OF THE CONTENTION OF THE APPELLANT.

(a) *The disputed statute, Chapter 174 of the Laws of Washington of 1913, as indicated by its title, was passed by the legislature of Washington in the year 1913 prior to any consideration of the principles of minimum wage legislation by the Supreme Court of the United States.*

In considering the Washington statute we desire to emphasize the fact that it was passed in 1913, long prior to the decision in the *Adkins* case and at a time when the legislature did not have the benefit of the views expressed by the Supreme Court of the United States in that decision. Also, it is to be noted that the statute does not represent any effort to meet an emergency or any unusual situation, but is designed to constitute a part of the regular statutory laws of the state, without respect to any particular situation, which the legislature may have had before it at the time of the passage of the law.

The substance of the Act is set forth in paragraph 2 which reads as follows:

> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance."

It is to be noted that this statute sets up only one standard, that is, whether or not the wage is adequate for the maintenance of the adult woman worker. As is true of all statutes passed during this period, it makes no attempt to require that the minimum wage have any relation to the reasonable value of the services rendered.

(b) *Adkins vs. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, and companion cases decided subsequent to the enactment of the Washington legislation, definitely condemn such legislation as the Washington minimum wage law.*

Subsequent to the passage of the Washington minimum wage law the case of *Adkins vs. Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, was decided by the Supreme Court of the United States in 1923. In considering the minimum wage law which had been passed by Congress for the District of Columbia the court, at page 558, stated as follows:

"The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract, or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage, may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound, at all events, to furnish it. The moral requirement, implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of such equivalence, is completely ignored. The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in de-

manding more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support, and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, and solely with relation to circumstances apart from the contract of employment, the business affected by it, and the work done under it, is so clearly the product of a naked arbitrary exercise of power, that it cannot be allowed to stand under the Constitution of the United States."

After the decision of the *Adkins* case the District Court of the United States for the District of Arizona held the Arizona minimum wage law for women unconstitutional, and upon appeal the decision was affirmed. *Murphy vs. Sardell,* 269 U. S. 530.

Again in 1927 the minimum wage law of Ar-

kansas was held unconstitutional by the District Court of the United States for the Eastern District of Arkansas. Upon appeal in the case of *Donham vs. West-Nelson Manufacturing Company*, 273 U. S. 657, it was determined that the Arkansas act was unconstitutional under the two preceding cases.

The unconstitutionality of this type of minimum wage legislation seems to have been generally accepted by the bench, bar and public subsequent to this last decision and no further litigation upon this subject appears until *Morehead vs. New York ex rel. Tipaldo*, ... U. S. ....., 80 L. Ed. Adv. Op. 921 (1936).

In the *Morehead* case the court again restated its position using the following pertinent language:

> "The decision and the reasoning upon which it rests clearly show that the State is without power by any form of legislation to prohibit, change or nullify contracts between employers and adult women workers as to the amount of wages to be paid."
>
> * * * * * *
>
> " * * * And utterly without significance upon the question of power is the suggestion that the New York prescribed standard includes value of service with cost of living whereas the District of Columbia standard was based upon the latter alone. As shown above, the dominant issue in the *Adkins* case was whether Congress had power to establish minimum wages for adult women workers in the District of Colum-

bia. The opinion directly answers in the negative. The ruling that defects in the prescribed standard stamped that Act as arbitrary and invalid was an additional ground of subordinate consequence."

"* * * And, after assuming that women would not be employed at the wages fixed unless they were earned or unless the employer could pay them, the opinion says (p. 570): 'But the ground on which the law is held to fail is fundamental and therefore it is unnecessary to consider matters of detail.' If the decision of the court turned upon the question of the validity of the particular standard, that question could not have been ignored by the justices who were in favor of upholding the Act. Clearly they understood—and rightly—that, by the opinion of the court, it was held that Congress was without power to deal with the subject at all."

The statements of the court would clearly indicate the invalidity of the legislative enactment which is before the court in this case.

(c) *A comparison of the Washington statute with the minimum wage laws subsequently presented to the Supreme Court of the United States shows that it contains all of the vices in the legislation heretofore condemned.*

A brief comparison of the statutes which were involved in the previous decisions clearly show the vulnerability of the Washington act.

The District of Columbia Act, being 40 Stat-

utes at Large 960, chap. 174, Comp. Stat. sec. 3421½a, Fed. Stat. Anno. Supp. 1919 p. 234, provided for the same substantial machinery as the Washington act for the determination of a minimum wage, setting up a board which was authorized to conduct a general investigation and by section 9 of the Act:

> "To ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; * * * "

A consideration of the mechanics of the law and the essential wording as set forth in the *Adkins* decision shows it to be a substantial duplicate of the Washington law.

In the case of the Arizona statute, this, from the records before us, was a direct attempt to fix a minimum wage by legislative fiat without the intervention of any board or commission to act as a fact finding body, the Arizona law reading in effect as follows:

> "No person * * * shall employ any female in any store, office, shop, restaurant, dining room, hotel, rooming house, laundry or manufacturing establishment at a weekly wage of

less than Sixteen Dollars ($16.00) per week; a lesser amount being hereby declared inadequate to supply the necessary cost of living to any such female, to maintain her health, and to provide her with the common necessaries of life." Laws of Arizona, 1923, chap. 3, sec. 1.

In the case of the Arkansas statute, we have an extensive act designed to cover all the various relationships which may occur in respect to the employment of women in industry. As shown in Crawford and Moses' Digest of the Statutes of Arkansas (1921) this act by section 7108 establishes a minimum wage. The section reads as follows:

"Sec. 7108. Minimum Wage. It shall be unlawful for any employer of labor mentioned in section 7102 (referring to a section fixing a nine-hour day for women) to pay any female worker in any establishment or occupation less than the wage specified in this section, to-wit, except as hereinafter provided: All female workers who have had six months' practicable experience in any line of industry or labor shall be paid not less than one dollar and twenty-five cents per day. * * * " (The balance of this section provides for inexperienced workers and part time workers.)

Under section 7111 of the act the Industrial Commission of Arkansas is given authority to readjust the wage by means of the following procedure:

"Sec. 7111. Authority to Establish Minimum Wage. If said commission should find, after an investigation, that a lower minimum

rate of wages is adequate to supply a woman or minor female worker engaged in any occupation, trade or industry the necessary cost of proper living and to maintain the health and welfare of such woman or minor female worker, (they) may, after a public hearing duly held, at which time all interested employers and employees are given a reasonable opportunity to present their arguments, issue an order establishing a minimum wage rate that in their judgment is reasonable and said rate so established shall be the legal minimum wage in the industry or occupation affected, and should said commission find, after said investigation, that the minimum wage specified in section 7108 is insufficient to adequately supply a woman or minor female worker engaged in any occupation, trade or industry the necessary cost of proper living and to maintain the health and welfare of such women or other female worker (they) may, after public hearing duly held, at which time all interested parties are given a reasonable opportunity to present their argument, issue an order establishing a higher minimum wage for female workers that in the judgment of the commission is reasonable, and said minimum wage rate, so established by said commission, shall be the legal minimum wage in the industry or occupation affected."

A consideration of these three statutes will show that they are substantially identical with that which is involved in this case, and are all designed substantially to operate by means of the same machinery, and to effect the same purpose.

We will not unduly lengthen this brief by discussing the statute of New York which was involved

in the *Tipaldo* case, since it was a statute which was drawn during the depression period and attempted in part to eliminate some of the objections which had been made to the prior statutes. Suffice it to say that it is the same general statute, except that it does not contain all of the vices which the foregoing statutes contain.

From a consideration of the Washington statute, the prior decisions of this court, and the identical nature of the Washington statute with the statutes involved in the prior decisions, we respectfully submit that the Washington decision should not be permitted to stand.

II.

THE SUPREME COURT OF THE STATE OF WASHINGTON ERRED IN ATTEMPTING TO DISTINGUISH THIS CASE FROM THE ADKINS CASE ON THE GROUNDS THAT (1) THE ADKINS CASE PASSED ONLY UPON AN ENACTMENT OF CONGRESS WHICH WOULD NOT HAVE THE POLICE POWER OF A STATE AND (2) THE SUPREME COURT OF THE UNITED STATES WILL NOT DISREGARD THE FINDINGS OF THE LEGISLATURE OF WASHINGTON AND THE SUPREME COURT THAT SUCH LEGISLATION IS DESIRABLE IN WASHINGTON.

The position of the court below may be best summarized by quoting three paragraphs from the decision appealed from:

> "The legal duty placed upon the employer by our minimum wage law is that he must pay women in his employ in wages a sum found to be necessary for the maintenance of the health as well as the morals of the employee. If the wages paid equal or are in excess of the cost of the maintenance of a normal health standard, the state's concern in the matter ceases. If the employer pays less than the amount found to be the minimum cost of the maintenance of the normal health standard by virtue of his more secure and powerful economic position, the transaction savors of exploitation."
>
> * * * * * *
>
> "We held in *Larsen vs. Rice*, 100 Wash. 642, 171 Pac. 1037, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore, the state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner.
>
> "If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the contrary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, p. 602. Rem. Rev. Stat., section 7623 (P. C.

> Sec. 3256), *et seq.*, is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. The United States supreme court has not yet held that a state statute such as the one in the case at bar is unconstitutional, and until such time—*Adkins vs. Children's Hospital,* 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, is not controlling—we shall adhere to our holding in the case of *Larsen vs. Rice,* 100 Wash. 642, 171 Pac. 1037; and *Spokane Hotel Co. vs. Younger,* 113 Wash. 359, 194 Pac. 595. It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that, in the state of Washington, evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist."

It is to be noted that the Supreme Court of Washington bases its decision on two points: (1) That the *Adkins* case was not binding since the act involved was an act of Congress; and (2) that the legislature and the state court having determined that the act is in the public interest, then that therefore the Supreme Court of the United States could not grant relief.

(a) *The power of Congress within the District of Columbia is as broad as that of the state within its own territory.*

In attempting to distinguish the *Adkins* case

the Supreme Court of the State of Washington took the view that the right of Congress to legislate for the District of Columbia was not sufficiently broad to include any right to make police regulations. In support of this position the court says in its decision:

> "That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states, needs no citation of sustaining authority. The police power of a state was not given to the Federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers."

We believe that the contrary of this situation is true, however, as to the right of Congress to legislate as to the District of Columbia in that Congress has all of the general rights of a legislature, including police power, which the states would have in their respective jurisdictions, subject only to the express limitations of the Federal Constitution.

In the case of *Shoemaker vs. United States*, 147 U. S. 282, the court states as follows on page 298:

> "We are not called upon, by the duties of this investigation, to consider whether the alleged restriction on the power of eminent domain in the general government, when exer-

cised within the territory of a State, does really exist, or the extent of such restriction, for we are here dealing with an exercise of the power within the District of Columbia, over whose territory the United States possess, not merely the political authority that belongs to them as respects the States of the Union, but likewise the power 'to exercise exclusive legislation in all cases whatsoever over such District.' Constitution, Art. I, Sec. 8, par. 17."

Likewise in the case of *Capital Traction Company vs. Hoff*, 174 U. S. 1, 19 S. Ct. 580, 43 L. Ed. 873, the court stated as follows:

"I. The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the National Government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the District all legislative powers that the legislature of a State might exercise within the State; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States."

Howard vs. Illinois Central Railroad Company, 207 U. S. 453, 28 S. Ct. 141, 52 L. Ed. 297;

Stoutenburgh vs. Hennick, 129 U. S. 141, 9 S. Ct. 256, 32 L. Ed. 637.

The authorities cited substantially sustain the

proposition that an act of Congress applying to the District of Columbia is limited only by the express provisions of the Federal Constitution limiting the powers of Congress. None of the limitations would be in any way effective to differentiate the minimum wage legislation of the *Adkins* case from that of any similar legislation of the respective states.

(b) *In any event the subsequent cases passing upon the states' legislation are directly in point.*

Irrespective of the powers of Congress over the District of Columbia the subsequent decisions of the Supreme Court of the United States heretofore cited holding invalid the minimum wage laws of Arizona and Arkansas are decisive of the present case.

In addition to this we have the most recent pronouncement of the court in the *Morehead* case where, in the concluding paragraph of the majority opinion, it is stated as follows:

> "The New York court's decision conforms to ours in the *Adkins* case, and the later rulings that we have made on the authority of that case. That decision was deliberately made upon careful consideration of the oral arguments and briefs of the respective parties and also of briefs submitted on behalf of States and others as *amici curiae*. In the Arizona case the attorney general sought to distinguish the District of Columbia Act from the legislation then be-

> fore us and insisted that the latter was a valid exertion of the police power of the State. Counsel for the California commission submitted a brief *amicus curiae* in which he elaborately argued that our decision in the *Adkins* case was erroneous and ought to be overruled. In the *Arkansas* case the state officers, appellants there, by painstaking and thorough brief presented arguments in favor of the same contention. But this court, after thoughtful attention to all that was suggested against that decision, adhered to it as sound. And in each case, being clearly of opinon that no discussion was required to show that, having regard to the principles applied in the *Adkins* case, the state legislation fixing wages for women was repugnant to the due process clause of the Fourteenth Amendment, we so held and upon the authority of that case affirmed *per curiam* the decree enjoining its enforcement. It is equally plain that the judgment in the case now before us must also be affirmed."

It is particularly interesting to note that in the *Adkins* case the attorneys generals for the states of Oregon, New York, California, Kansas, and Wisconsin filed briefs in support of the legislation.

(c) *The state legislature and the State Supreme Court can not deprive a person of his constitutional rights by merely stating that the enactment is made as an exercise of the police power for the correction of an existing evil.*

If the Washington court's theory is to be accepted, the fact that the state legislature and state

court find that a law is a proper exercise of the police power, then the Supreme Court of the United States is powerless to grant any relief against the legislation. The mere statement of this proposition shows its fallacy. If it were accepted, then the Constitution would be a nullity.

This theory was disposed of in the case of *Meyer vs. Nebraska,* 262 U. S. 399, 67 L. Ed. 1042, where, after the legislature of Nebraska and the Supreme Court of Nebraska had at great length stated the necessity for the particular legislation governing the teaching of foreign languages in the schools, the court stated as follows:

> "It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign-born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperiled.
>
> "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. The

protection of the Constitution extends to all,—to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution,—a desirable end cannot be promoted by prohibited means."

The same proposition is disposed of in the case of *Minnesota vs. Barber,* 136 U. S. 313, at page 319, where the court states as follows:

"The presumption that this statute was enacted, in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, cannot control the final determination of the question whether it is not repugnant to the Constitution of the United States. There may be no purpose upon the part of a legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void. This principle of constitutional interpretation has been often announced by this court."

And the matter was again disposed of in the case of *Buchanan vs. Warley,* 245 U. S. 60, at page 74, where the court stated:

"The authority of the State to pass laws in the exercise of the police power, having for their object the promotion of the public health,

safety and welfare is very broad as has been affirmed in numerous and recent decisions of this court. Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases."

We respectfully submit that Chapter 174 of the Laws of Washington, 1913, is unconstitutional and void, so far as it attempts to fix a minimum wage for adult women, for the reason that it is in conflict with the Fourteenth Amendment of the Constitution of the United States, that the judgment of the Supreme Court of the State of Washington should be reversed, and the judgment of the Superior Court of the State of Washington for Chelan County directed to be affirmed.

Respectfully submitted,

JOHN W. ROBERTS,
CROLLARD & O'CONNOR,
ROBERTS AND SKEEL,
Counsel for Appellant.

APPENDIX.

The pertinent parts of Chapter 174, Laws of 1913, page 602, being section 7623, *et seq.*, of Remington's Revised Statutes of Washington, are as follows:

> "Section 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power, declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.
>
> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.
>
> "Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held under to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

Under Chapter 7, Laws of 1921, page 46, section 82, and page 68, section 134, being Remington's

Revised Statutes (1932) Section 10840 and Section 10893 respectively the Industrial Welfare Commission was abolished, and its duties assigned to the Industrial Welfare Committee, consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician, and the Supervisor of Women in Industry.

> "Sec. 6. It shall be the duty of the Commission to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. * * *
>
> * * * * * *
>
> "Sec. 9. The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. * * *
>
> "Section 10. If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employees in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the pub-

lic shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employees. The findings and recommendations of the conference shall be made a matter of record for the use of the commission.

"Sec. 11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or if may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occupation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of

wages, or under conditions of labor prohibited for women in said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

"Sec. 12. Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the commission may at its discretion reopen the question and re-convene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

"Sec. 13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to any apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

* * * * * *

"Sec. 18. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in section 13, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account.

"Sec. 19. All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employee shall have the right of appeal to the superior court on questions of law.

* * * * * * "

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, a Corporation, *Appellant*,

v.

ERNEST PARRISH AND ELSIE PARRISH, his wife, *Appellees*.

Appeal from the Supreme Court of Washington.

APPELLANT'S ANSWER TO BRIEF OF AMICI CURIAE.

JOHN W. ROBERTS,
E. L. SKEEL,
Counsel for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The brief of the Attorney General for the State of Washington was not received by appellant until just as counsel was leaving Seattle, and therefore no opportunity has been had to answer it prior to argument. We therefore submit herewith summary of our oral argument which constitutes our answer to the brief of the Attorney General.

DEFINITION OF ISSUES.

This case brings up for consideration the constitutionality of legislation by a State authorizing the fixing of minimum wages for women. It involves no new type of legislation of the minimum wage class, but is similar in principle and in essential detail to that held invalid in the case of *Adkins* v. *Children's Hospital*, 261 U. S. 525. The Washington Act here in issue was passed in 1913, before the decision in the Adkins case. It does not contain the factual background of the New York Act, considered in the Tipaldo case in 1936, 80 L. Ed. Adv. Op. 921, nor does it predicate the fixing of wages in part or in whole upon any consideration of the value of the services rendered. Later I shall in detail distinguish the New York Act and show the substantial identity between the Washington Act and the District of Columbia Act construed in the Adkins case and the statutes of Arizona and Arkansas, all of which were held invalid. First, however, I shall give the facts and explain the issues in the case at bar, as shown by the record, so as to leave no doubt that the sole question before the Court is whether it wishes to reconsider and overrule the Adkins case. The West Coast Hotel Company case, now in argument, must be reversed and the Washington statute declared invalid unless the Adkins case is to be expressly overruled.

ANALYSIS OF WASHINGTON ACT.

Section one of the Washington Minimum Wage Act contains a short declaration that women should be protected from conditions of labor which have a pernicious effect upon their health and morals, and that inadequate wages exert such effect. Section two provides that it shall be unlawful to employ women at wages not adequate for their maintenance. Section three provides that a commission shall establish such standards of wages as shall be

> "held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

The words "held hereunder to be reasonable" refer to the provisions of Sections 10 and 11 prescribing how the Commission shall arrive at the minimum wages. It has no reference to value or the consideration to be given, but solely to what the Commission deems to be necessary for proper living expenses. Section 10 provides that the Commission shall call a conference to recommend a

> "minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and to maintain the workers in health."

Section 11 provides that if the recommendation of the conference is approved, the Commission shall specify it as the minimum wage for women in the occupation affected, and the standard conditions of labor for said women, and that after such order it shall be unlawful for any employer to employ adult women at less than said rate of wages. Under Section 19 questions of fact shall be determined by the Commission and there shall be no appeal therefrom, but either party may appeal to the Superior Court on questions of law. The Commission has no power to consider value of services in determining the wage. It is mandatory upon the Commission to fix a wage

> "adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health."

This analysis establishes the identity of the Act with that of the District of Columbia, and in principle with those of Arizona and Arkansas, all of which are described in appellant's brief.

ANALYSIS OF FACTS AND HISTORY.

During the depression, and while the N. R. A. was in operation, the appellee, Elsie Parrish, was employed as a chambermaid in a hotel in Wenatchee, Washington, owned by the appellant. Wages were agreed upon and paid in the

agreed amount. After 18 months she brought this suit for the difference between what she received and the amount specified by the Washington committee.

The Superior Court of Chelan County held that the case was controlled by the Adkins decision, with which also the Court said he agreed in principle. Upon appeal the State Supreme Court of Washington reversed the Superior Court and held the statute constitutional, and directed judgment for the appellee. The decision of the Washington Supreme Court was based solely upon the validity of the statute in question and the power of the Industrial Welfare Committee to fix a minimum wage. The decision of said Court had no relation to any other matter whatsoever. The findings of the trial court were undisturbed. From the judgment of the Washington Supreme Court, the highest tribunal in that State, the appellant has appealed to this Court under Rule 46. All requirements have been complied with, the appeal allowed and jurisdiction accepted; and, as previously stated, the sole issue is the validity of the Washington statute.

The Attorney General's brief amici curiae erroneously states that there are no findings of fact, and that the judgment here should be affirmed because there was nothing in the record to show that the wages actually prescribed by the Commission under the Minimum Wage Act were other than were reasonable or agreed upon. The Attorney General inadvertently was in error in that statement, because he did not have the record when his brief was prepared. Findings of fact were made and are set out in the printed transcript, page 18, and expressly show that appellee worked at an agreed wage, and that this was paid to her, except the final salary of $17, which was tendered to and refused by her. The findings of the lower court (Tr. 19) further show that appellee's contention that she should have been paid at the wages fixed by the Industrial Welfare Commission "is unsound, is not sustained by the evidence," and in violation of the rights guaranteed by the 14th Amendment to the Federal Constitution.

I have heretofore outlined the Washington statute and compared it with the District of Columbia statute involved in the Adkins case. This I could do in more detail were it necessary, but I do not believe that my statement will be challenged that the two statutes are substantially identical in purpose, in principle, in the absence of factual declarations and findings, in administration, in procedure, and in detail.

ANALYSIS OF ADKINS CASE.

While the Adkins case has so recently been before the Court that its pronouncements are familiar to you, yet a brief summary may be useful. That case involved a similar statute of the District of Columbia, with respect to which Congress has legislative jurisdiction and the same police powers that the legislature of a State has within its jurisdiction. The statute was attacked upon the ground that it authorized an unconstitutional interference with the freedom of contract included within the guarantees of the due process clause o fthe Fifth Amendment, just as we attack the Washington statute because it is in violation of the due process clause of the Fourteenth Amendment. The majority opinion holds that the right to contract is a part of the liberty of the individual protected by this clause; that an interference with this liberty must be deemed to be arbitrary unless it be supported as a reasonable exercise of the police power of the State; that there is no such thing as absolute freedom of contract, but that freedom is the general rule and restraint the exception. The Court divided the decisions where interference was permitted into four classes:

1. Those dealing with statutes fixing rates to be exacted by businesses impressed with a public interest, and held that these decisions were inapplicable.

2. Cases involving statutes relating to contracts for the performance of public work. These were also held inapplicable.

3. Cases dealing with statutes prescribing the character, method and time for the payment of wages. These statutes have been sustained in a number of decisions by this Court. The Court said in the Adkins case:

> "In no sense can they be said to be, or to furnish a precedent for, wage-fixing statutes."

4. Decisions relating to statutes fixing hours of labor. These statutes were sustained as a legitimate exercise of the police power, on the ground that the legislature had determined that these particular employments, when too long pursued, were injurious to the health of the employees, and that, as there were reasonable grounds for supporting this determination, the decision of the legislature in that respect was beyond the reviewing power of the Federal courts. These decisions were likewise held inapplicable by the majority opinion, which quotes from other decisions to the effect that the mere assertion that the subject relates, though but in a remote degree, to the public health does not necessarily render the enactment valid. The Act must have a more direct relation as a means to an end, and the end itself must be appropriate and legitimate before an act can be held to be valid which interferes with the general right of an individual to be free in his power to contract in relation to his own labor. The statute involved in *Bunting* v. *Oregon*, 243 U. S. 426, was held to regulate hours of labor rather than wages, and the contention that it was an attempt to fix wages was rejected, and said law and others constituting regulation of hours and conditions were upheld as a proper exercise of the police power. The Court held that the District of Columbia statute was to be differentiated from all those referred to in the four named classes; that it does not prescribe hours of labor or conditions of working, but was simply "a price fixing law". It held that

> "the price fixed by the Board need have no relation to the capacity or earning power of the employee, or the number of hours which may happen to constitute the

> day's work. While it has no other basis to support its validity than the presumed necessities of the employee, it takes no account of any independent resources that she may have. * * * The standard furnished by the statute for the guidance of the Board is so vague as to be impossible of practical application with any reasonable degree of accuracy."

It held that the law compelled the employer

> "to pay at least the sum fixed in any event because the employee needs it, but requires no service of equivalent value from the employee"

and that

> "A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work to be done under it, is so clearly the product of a naked, arbitrary exercise of power, that it cannot be allowed to stand under the Constitution of the United States."

The bench and bar generally have accepted the Adkins case as controlling statutes like that of the District of Columbia, including the Washington statute. This even may be inferred from the Washington order fixing minimum wages. The Washington statute was passed in 1913. It was upheld by the Washington Supreme Court in 1918. The order fixing the minimum wages here in question was adopted August 5, 1921 (Tr. 49). The Adkins case was decided in 1923. Appellee still relies on the order of 1921, although the intervening years have seen the greatest boom and most severe depression in history, with a corresponding fluctuation in wage scales and living costs. Nothing more is needed

to show that both from a social and constitutional viewpoint the statute and the proceedings under it are fanciful, arbitrary and impotent to accomplish the declared purpose. A statute fixing minimum wages upon the basis of value of services, applicable to all individuals in a given class, permitting reasonable flexibility under changing conditions, may accomplish a social service and be a reasonable exercise of the police power. That is for this Court to decide if a clear case is presented to it, as for instance in the Ohio statute. But an Act such as the Washington statute, which looks at one side of the problem only, and attempts to fix wages upon the basis of necessity rather than earning power, is arbitrary, an improper exercise of the police power, and utterly impractical to help the people it is designed to benefit. The police power of a State should be upheld in a proper case, but it accomplishes no social or economic relief to uphold statutes based on extreme or illogical applications of the police power. To do so invites other legislation equally unjustifiable from a constitutional viewpoint. If we sustain every act of a legislature because it is within the general range of subjects embraced by the police power, regardless of how arbitrary are the means employed, we nullify the Constitution, abandon our duty to uphold it, and in effect surrender to the legislature the exclusive and sole power to decide when the police power exists, how and by what means it is to be exercised and whether the end is a proper one, and the means appropriate to that end. In history, that has not been the traditional policy of this Court. If and when such a policy is adopted, and acts with good purpose but inappropriate and arbitrary means are sustained, the liberties guaranteed by the Constitution are gone.

ANALYSIS OF TIPALDO CASE.

We now pass to the Tipaldo case, not with any view of debating the correctness of the opinions therein filed, but to show that the dissenting opinion of Mr. Chief Justice

Hughes was based upon his belief that the New York statute provided a substantially different standard than the District of Columbia Act, in that it provided that the fair value of services was to be taken into consideration in fixing a minimum wage. No such situation exists in the Washington case. The element of reasonable value of services is not involved. Our case is governed solely by the Adkins case and the subsequent cases in conformity with its holding.

The majority opinion of this Court in the Tipaldo case holds that the construction of the New York statute by the highest court of that State was binding upon it, and that that court could see no distinction between the Adkins case and the Tipaldo case. Quoting from the New York court, it said:

> "The Act of Congress had one standard, the living wage; this State Act had added another, reasonable value. The minimum wage must include both. * * * One of the elements therefore in fixing the fair wage is the very matter which was the basis of the Congressional Act."

I interpret this to mean, if the New York court is right, that under that Act the Board must in any event fix a living wage, and that the employee gets more if he earns it. Or, to state it another way, that they shall fix the fair value, but the minimum must be a living wage.

This Court further held in the Tipaldo case that it has always recognized the essential difference between the fixing of hours and working conditions and the fixing of wages; that with respect to the Adkins case

> "the decision and the reasoning upon which it rests clearly show that the State is without power, by any form of legislation, to prohibit, change or nullify contracts between employers and adult women workers as to the amount of wages to be paid."

The majority further held with respect to the Adkins case that

> "That decision was deliberately made upon careful consideration of the oral arguments and briefs of the respective parties, and also the briefs submited in behalf of States and others as amici curiae." * * *
>
> "We have adhered to the principle there applied and cited it as a guide in other cases." * * *
>
> "That States having similar enactments have construed it to prevent the fixing of wages for adult women."

It is therefore clear that the majority in the Tipaldo case have expressly reaffirmed the Adkins case and the principle there laid down with respect to any attempt to take away the right of contract with respect to wages. The chief applicability of the Tipaldo case in the present litigation is that Mr. Chief Justice Hughes pronounced a distinction in the Tipaldo case from the Adkins case, but the element upon which the supposed distinction exists is not present in the case at bar. There is no attempt whatever in the Washington statute to predicate the minimum wage upon the reasonable value of the service nor upon a factual background concerning which so much is made in the Tipaldo case.

While we are discussing the Tipaldo case may we respectfully refer to the other dissenting opinion by Mr. Justice Stone, because he plainly implies that he does not agree with the pronouncements of the majority in either the Tipaldo case or the Adkins case. Since the case at bar is controlled by the Adkins case, it is permissible for us to respectfully set forth what we conceive to be erroneous reasoning by Honorable Mr. Justice Stone. He said:

> "No one has yet attempted to say upon what basis of history, principles of government, law or logic, it is within due process to regulate the hours and condi-

> tions of labor of women * * * and of men * * * and of the time and manner of payment of wage, * * * but that the regulation of the amount of the wage passes beyond the constitutional limitation, or to say upon what theory the amount of a wage is any the less the subject of regulation in the public interest than that of insurance premiums, * * * or the commissions of insurance brokers, * * * or of the charges of grain elevators, * * * or of the price which the farmer receives for his milk, * * * or the wage earner pays for it."

I have omitted the citations which he employs. The argument is forceful, but is completely answered by the reasoning in the several cases which he cites. In each of the cases mentioned the end was legitimate and the means reasonable and appropriate to that end. In the case at bar, whether the end is appropriate or not, the means employed are arbitrary, unreasonable, confiscatory, and bear no fair relation to the end sought to be obtained. If the District of Columbia minimum wage statute was based upon fair value of services rather than a living wage, Mr. Justice Stone's criticism would be more pertinent; but since the method of fixing the minimum wage is purely arbitrary and has no relation to value, then the Adkins case cannot be criticized on the authority of the cases he cites.

NEBBIA CASE.

This is well illustrated in the *Nebbia* case, *Nebbia* v. *New York,* 281 U. S. 502, where the price which the farmer and the dealer were to receive and which the public was to pay for milk was authorized by statute to be fixed by an Administrative Board. This was upheld as a proper exercise of the police power. The statute was predicated upon a factual investigation lasting for a year and embraced a thorough and detailed study of an economic problem vitally affecting the welfare of the whole people. It was not a loosely drawn statute, such as we are here concerned with.

But the *Nebbia* case has no analogy to the present situation or possibly even to the Tipaldo case, because there is one vital difference of fact, and that consists in the wording of the statute. The statute involved in the *Nebbia* case says: "The Board shall ascertain * * * what prices for milk will best protect the milk industry * * * and insure a sufficient quantity of pure and wholesome milk * * *."

"Said Board shall take into consideration all conditions affecting the milk industry, including the amount necessary to yield a reasonable return to the producer and to the milk dealer."

conclusive distinction between those cases.

By some of the Judges of this Court the subject of fixing a minimum wage upon proper standards is considered as being within the police power of the State. To those who take this view and consider that the *Nebbia* case in any way affects the case at bar, I point out the above significant difference in statutes and in factual considerations. I can hardly imagine that this Court would have sustained the statute in the *Nebbia* case had it required the Board to fix a price for milk less than the cost of production, or arbitrarily so high as to be beyond the reach of those who were paying for it. If the statute in the *Nebbia* case had arbitrarily commanded the Board to exclude from consideration the cost of production or the fair value of the merchandise, this Court would have had no hesitation in holding the statute void. This is precisely what was done in the District of Columbia statute in the Adkins case and in the Washington statute under consideration. And no sympathy with the social objects of a minimum wage law should blind us to the fact that no good is accomplished by endeavoring to promote a legitimate end by inappropriate, unconstitutional means. In truth, the minimum wage statute here involved should not bear that name at all. The word "wage"

implies service of value, and has the implication of fair consideration for the money received. A statute fixing a minimum wage upon any other basis simply imposes confiscatory burdens upon the employer and actually prevents employees from securing employment, particularly in times of economic stress.

ANSWER TO APPELLANT'S ARGUMENTS.

I now pass to a consideration of the arguments presented by the Washington Supreme Court and by the appellee and by the Attorneys General as amici curiae in support of the Washington statute. Without regard to where found, I will state these arguments in order:

1. It is claimed that the Adkins case is not binding, since the Act involved was an Act of Congress; that the Federal Congress did not have the same police power in the District of Columbia that a legislature has in a State, and that the power of the State with reference to police power in its own jurisdiction is supreme. It is clear, however, that the police power of Congress within the District of Columbia is as broad as that of a legislature within a State. In *Capital Traction Company* v. *Hoff*, 174 U. S. 1, 19 S. Ct. 580, 43 L. Ed. 873, the Court said:

> "It (the Congress of the United States) may exercise within the District all legislative powers that the legislature of a State might exercise within the State."

Other authorities to the same effect are found in our opening brief. The argument of appellee and the Washington Supreme Court goes to the full extent of saying that the Supreme Court of the United States has no power to protect an individual citizen against the encroachment upon his individual rights by the State under the guise of the police power. That is not the law. The holding in the

Arizona and Arkansas cases so prove. I point out that in the Arizona case Mr. Justice Holmes concurred in holding the statute invalid on the authority of the Adkins case, although he himself dissented from the Adkins decision. The fact that Congress has expressly provided for appeals in situations like this disproves the contention. The act of February 13, 1925, chapter 229, in substance provides that a final judgment in the highest court of a State may be reviewed by the Supreme Court where the validity of a statute of the State is drawn in question. It should be noted also that in the Adkins case and the Tipaldo case various Attorneys General for different States filed briefs. It makes no difference whether the decision of the State court is in favor of or against the validity of the statute, the Supreme Court has jurisdiction to review it, once the conflict between the State statute and the Federal Constitution is brought in question. It is true that the construction of the State court of a State statute will be binding upon the United States Supreme Court, but in the instant case that statute is construed by the Washington Supreme Court precisely as I have indicated here, namely, that it is mandatory upon the Commission to fix a wage without regard to reasonable value.

2. The second contention is that the State legislature could deprive a person of his constitutional rights under a State statute by merely stating that the enactment is an exercise of the police power for the correction of an existing evil, and that the Supreme Court of the State by upholding the Act thereby makes a fact determination which precludes a different determination by the United States Supreme Court. This contention, however, was disposed of by several cases cited in our opening brief. We would have an intolerable situation if that contention were true. The same statute might be enacted in different States and held constitutional in some and unconstitutional in others as respects the United States Constitution. State lines give

no excuse for interpreting our Federal Constitution differently as applied to the same Act in different States. In *Buchanan* v. *Warley*, 245 U. S. 60, the Court said:

> "Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases."

3. The brief of the appellee really raises no other or different point. It says that we have correctly stated the issues, and that the issue to be determined is

> "whether this legislative act is a valid and reasonable exercise of the police power of the State of Washington. The Constitution does not prohibit states from regulating matters pertaining to public welfare, but simply requires those matters be exercised in a manner reasonably tending to that end."

The real point of appellee's brief, however, is the contention that because the Washington Act received the approval of the Supreme Court of Washington it is *ipso facto* entitled to approval by this Court, and that the presumption of constitutionality must prevail in the absence of any factual foundation in the record for declaring the Act unconstitutional. No such factual foundation is necessary. If a State Act, for instance, provided that one could be imprisoned without a trial, it would not be necessary to produce any factual evidence to show the invalidity of the statute. It would be necessary only to show the fact of imprisonment and the terms of the statute. The Washington minimum wage statute itself carries upon its face all of the factual evidence necessary for its condemnation. It

provides, and the Supreme Court of Washington has construed it to mean, that a minimum wage must be established without regard to the value of services rendered. That condemns it beyond question.

4. The brief of the Attorney General is in part based upon the erroneous statement that there were no findings of fact, and a considerable part of the discussion it contains is therefore not material. However, it seizes upon the use of the word "reasonable" in the statute; but, as above pointed out, that word, as expressly defined, related to what was reasonable for living purposes, not what was a reasonable consideration in services for the money received. The brief also says that no effort was made to show that a reasonable and fair rate was either more or less than the rate established by the Welfare Committee; but the findings expressly show that an agreed rate was in force and this will be presumed to be a reasonable rate as having been agreed upon by the parties to be the consideration to be paid. The brief also says that it is difficult to understand why minimum wages may not be fixed without violating due process, if prices can be so fixed, and that both interfere with the liberty of contract. That has been answered by the repeated decisions of this Court already discussed. The distinction is that in those cases where the right to fix prices has been upheld there was a legitimate end to be attained, and appropriate and reasonable means adopted. In the case at bar the means at least were arbitrary. We do not, as asserted by the Attorney General's brief, contend that any attempt to fix a minimum wage in industry would be arbitrary and discriminatory. That is not necessary to this decision. We do say that a statute of the type here involved, which operates without factual background and which imposes a mandatory duty to disregard the element of fair consideration, is by its own terms invalid and a complete overriding of the Constitution. When a statute of that character comes before this Court it needs neither evidence nor facts to condemn it. The language of the Act itself plainly shows that

it is an attempt to override the individual liberties which are safeguarded by the Constitution. Reference is made in the Attorney General's brief to the upholding of this statute by the previous cases of *Larsen* v. *Rice,* 100 Wash., 642, and *Spokane Hotel Company* v. *Younger,* 113 Wash., 359. Both of these decisions, however, were long prior to the Adkins case, and ceased to be an authority immediately upon its decision, and are of no force and effect whatever upon this Court in determining whether the provisions of the State statute contravene the United States Constitution. In the Tipaldo case Mr. Chief Justice Hughes quoted the definition of an oppressive and unreasonable wage under the statute as one

> "which is both less than the fair reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health."

The Washington statute contains no such element of reasonable value. The brief of amici curiae asserts that there is no evidence showing that the rate fixed by the Commission was unreasonable. That is not necessary. The evidence shows that there was an agreed rate and that the Supreme Court set that aside because the Commission fixed a minimum rate based solely

> "upon the estimate of the Conference of the minimum wage adequate to supply the necessary cost of living and to maintain such employees in health and comfort." (Tr. 50.)

Appellant had a contract relating to wages. The contract price was paid. The evidence shows there was a going rate. That going rate was paid. After accepting this agreed wage for eighteen months, the appellee seeks to obtain more solely because the Commission under the Act fixed a rate which the order itself shows had no reference to the value of the services.

CONCLUSION.

In conclusion we contend that the issue before this Court is simply whether the Adkins case is to be reconsidered and reversed or whether its authority is to be sustained. We believe the considered judgment of the American people is that the majority opinion in that case was right. There may be authority that a minimum wage act based upon fair value of services might be upheld. That view, however, gives to the appellee no support in this case, because the Washington statute was passed prior to any decision on the minimum wage statutes, and is of the type held arbitrary, unreasonable and unconstitutional in the Adkins case and in the Tipaldo case. It follows that the judgment of the Supreme Court of the State of Washington must be reversed and the judgment of the Superior Court of Chelan County, Washington, set out in the record herein, affirmed.

JOHN W. ROBERTS,
E. L. SKEEL,
Attorneys for Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 293

WEST COAST HOTEL COMPANY, a corporation,
Appellant,

vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,
Appellees

APPELLEE'S BRIEF ON THE LAW

C. B. CONNER,
Attorney for Appellees.

SAM M. DRIVER,
Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 293

WEST COAST HOTEL COMPANY, a corporation,
Appellant;

vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,
Appellees

BRIEF OF APPELLEES

STATEMENT

The appellant has set forth the correct statement in regard to the proceedings had in this matter, and we find no fault in that regard. The appellees brought an action in the Superior Court of Chelan County, Washington, for the recovery of wages claimed due, and the trial Court held that the Minimum Wage Law for Women, as passed by the Legislature of the State of Washington in the year 1913, contravenes the XIV Amendment of the Constitution of the United States. From that decision, these appellees appealed to the Supreme Court of the State of Washington, and the trial Court's judgment was reversed. The controlling authority relied upon by the trial Court is the case of *Adkins v. Children's Hospital* 261 U. S. 525.

ISSUE

The question involved and the issue to be determined is whether this legislative act is a valid and reasonable exer-

cise of the police power of the State of Washington. The Constitution does not prohibit states from regulating matters pertaining to public welfare, but simply requires those matters be exercised in a manner reasonably tending to that end. (*Nebia v. New York*, 291 U. S. 592). No act of the Legislature is presumed to be upon improper grounds, and the burden rests upon him who assails the exercise of the power to show that such exercise is improper. (*Missouri Pacific Railway Co. v. Norwood*, 283 U. S. 249; *Borden's Farm Product v. Baldwin*, 293 U. S. 194).

It is within the province of the Legislature, and a proper legislative function, to determine what matters and conditions pertaining to the public welfare require attention and the remedy to be used for such matters. (*Radice v. New York*, 264 U. S. 292). In passing the minimum wage law the Legislature of the State of Washington had under consideration the needs of the people of that state or in other words, the general welfare of the people of the State of Washington, and in construing that law the Supreme Court of the State of Washington approved the findings of the Legislature and determined that the act passed was in the interest of the general welfare of the community. (*Larsen v. Rice*, 100 Wash. 642).

In determining the constitutionality of this act, the Court does not consider or inquire into the wisdom thereof nor the economic conditions of the State of Washington which induced the passage of the law, and unless the act is entirely beyond the legislative power, it is not subject to objections from a constitutional point. (*Nebia v. People*, 291 U. S. 502; *Northern Securities Company v. United States*, 193 U. S. 197; *Atkins v. Kansas*, 191 U. S. 297; *O'Gohrman and Young v. Hartford Fire Insurance Co.*, 282 U. S. 251—257 and 58).

It is insisted by the appellees that the minimum wage law in question does not operate in a unreasonable man-

ner, and that it is within the province of the State Legislature to determine whether this law is an economic necessity, or in other words, whether or not it was a reasonable and proper remedy for evils found by the Legislature to exist.

ADKINS CASE

The sustaining of the decision of the Supreme Court of the State of Washington in this matter is not in conflict with the decision of this Court in the case of *Adkins v. Children's Hospital.* This law was passed by virtue of the reserve police power ot the State of Washington, and having received the approval of the highest Court of the State of Washington is entitled to approval by the Supreme Court of the United States. The Adkins Case construed an act of Congress which had received the disapproval of the highest Court of the District of Columbia, and we, of course, draw the conclusion that the act of Congress not having received the approval of that Court was not a reasonable and proper remedy for a condition existing in the District of Columbia. If the act of Congress so construed had been upheld by the highest Court of the District of Columbia, then this Court would accept that judgment in the absence of any facts to support a contrary conclusion. (*Adkins v. Children's Hospital*, 261 U. S. 525; *Bunting v. Oregon*, 243 U. S. 426).

The presumption of constitutionality must prevail in the absence of any factual foundation in the record for declaring the act unconstitutional. In this case there is no indication of anything of the kind, and the act of the Legislature, with the approval of the highest Court of the State of Washington, conclusively shows that an evil existed for which this act is a proper remedy. (*O'Gohrman and Young v. Hartford Fire Insurance Co.* 282 U S. 251). That the decision in the instant case by the State of Washington is not inconsistent with other decisions of the Supreme Court of the United States is amply shown

by the record. In the Bunting Case (*Bunting v. Oregon*, 243 U. S. 426) the Oregon law was upheld as having been approved by the Supreme Court of that state as a law necessary for the preservation of the health of employees. This is also true in regard to the statute passed by the State of New Jersey regulating certain wages. (*O'Gohrman and Young v. Hartford Fire Insurance Company*, 282 U. S. 251).

While it is true that the Arizona and Arkansas statutes were declared unconstitutional (*Murphy v. Sardell*, 269 U. S. 530; *Donham v. West Nelson Manufacturing Company*, 273 U. S. 657) by this Court, those decisions follow with approval the decision of the Supreme Court of the States of Arizona and Arkansas. The same situation applies to the law of the State of New York. In that state the law similar to the one under consideration here failed to receive the approval of the highest Court of that jurisdiction, and this Court approved and sustained the act of the Supreme Court of the State of New York (*Morehead v. People of the State of New York*, 56 S. Ct. 918) but in no case has a decision of the highest Court of a State upon the exercise of a police regulation by fixing minimum wages been reversed by the Supreme Court of the United States, and therefore we are forced to the conclusion that there being nothing in this record to indicate that the action of the Legislature did not promote the general welfare of the people of the State of Washington or was an unreasonable exercise of police power, it must be approved.

This statute being valid under the XIV Amendment of the Constitution of the United States as a proper police regulation should be approved and the decision of the Supreme Court of the State of Washington affirmed.

Respectfully submitted,

C. B. CONNER,
SAM M. DRIVER.
Attorneys for Appellees.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER, 1936, TERM

WEST COAST HOTEL COMPANY, a corporation, *Appellant*, vs. ERNEST PARRISH and ELSIE PARRISH, his wife, *Appellees.*	No. 293

MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN ARGUMENT AS AMICI CURIAE

G. W. HAMILTON,
Attorney General of the State of Washington.

W. A. TONER,
Assistant Attorney General.

GEO. G. HANNAN,
Assistant Attorney General.

Attorneys for the State of Washington.

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IN THE

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OCTOBER, 1936, TERM

WEST COAST HOTEL COMPANY, a corporation, *Appellant*, vs. ERNEST PARRISH and ELSIE PARRISH, his wife, *Appellees*.	No. 293

MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN ARGUMENT AS AMICI CURIAE

Come now G. W. Hamilton, Attorney General of the State of Washington, W. A. Toner, Assistant Attorney General of the State of Washington and Geo. G. Hannan, Assistant Attorney General of the State of Washington, and move the court that leave be granted to the said G. W. Hamilton and W. A. Toner and Geo. G. Hannan to file a brief as *amici curiae* in the above entitled cause and that leave be granted to the said W. A. Toner and Geo. G. Hannan to participate as *amici curiae* in an oral argument of said cause before the bar of this court dur-

ing a portion of the time allotted to counsel to appellees for oral argument.

This motion is based upon the records and files in said cause and upon the hereunto attached affidavit of Hon. G. W. Hamilton, Attorney General of the State of Washington.

G. W. HAMILTON,
Attorney General of the State of Washington.

W. A. TONER,
Assistant Attorney General,

GEO. G. HANNAN,
Assistant Attorney General,

Attorneys for the State of Washington.

IN THE

SUPREME COURT

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OCTOBER, 1936, TERM

WEST COAST HOTEL COMPANY, a corporation, *Appellant*, vs. ERNEST PARRISH and ELSIE PARRISH, his wife, *Appellees.*	No. 293

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF, ETC.

STATE OF WASHINGTON, County of Thurston, } ss.

G. W. Hamilton, being first duly sworn upon his oath, deposes and says: That affiant is the duly elected, qualified and acting Attorney General of the State of Washington; that W. A. Toner and Geo. G. Hannan are regularly designated, appointed and acting under the instructions of Honorable Clarence D. Martin, Governor of the State of Washington; affiant is preparing and has prepared a brief for the State of Washington in this cause; that the action in question involves a law of the

State of Washington authorizing the state welfare commission to fix minimum wages for women and minors in certain occupations, and the object of the appellant upon this appeal is to have the act declared unconstitutional; that the State of Washington is interested in maintaining suitable and sanitary conditions of work for women employed in industry, and that they shall be paid a reasonable wage sufficient in any event for their decent maintenance.

This affidavit is made in support of attached motion for leave to file a brief and to participate in the oral argument.

G. W. HAMILTON.

Subscribed and sworn to before me this 21st day of November, 1936.

(SEAL)

JENNIE M. TATTERSALL,
Notary Public in and for the State of Washington, residing at Olympia, Washington.

IN THE

SUPREME COURT

OF THE

UNITED STATES

WEST COAST HOTEL COMPANY, a Corporation, *Appellant,* vs. ERNEST PARRISH and ELSIE PARRISH, his wife, *Appellees.*	No. 293.

BRIEF OF AMICI CURIAE

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WEST COAST HOTEL COMPANY, *a Corporation*, *Appellant*, vs. ERNEST PARRISH and ELSIE PARRISH, his wife, *Appellees.*	No. 293.

BRIEF OF AMICI CURIAE

STATEMENT

HISTORICAL

The minimum wage law of the State of Washington, the constitutionality of which has been questioned by the appellant in this case, was passed by the State of Washington in the year 1913, Laws of Washington, 1913, chapter 174, and has been the law of Washington for twenty-three years. It had been twice sustained as valid by the supreme court of Washington prior to the decision in the instant case. *Larsen v. Rice*, 100 Wash. 642, and *Spokane Hotel Co. v. Younger*, 113 Wash. 359.

The law itself is identical with the law of the State of Oregon which was before this court in the case of *Stettler v. O'Hara*, 243 U. S. 629, 37 Sup. Ct. 475, and was affirmed without an opinion by an equally divided court.

STATEMENT OF THE ISSUES

We take the position that the law applicable to this case has not been passed upon by this court. The present action is an action in contract between a chambermaid, as plaintiff, and an inn keeper, as defendant. The amount in controversy is $216.19. The state statute is involved only incidentally. The order complained of is an order made by the welfare committee of the state and affects the public housekeeping industry, that is, hotels.

As we view the matter, the law is to be tested upon the issue brought out in the evidence. It is wholly immaterial whether or not Washington's minimum wage law is valid or void so far as every other industry in the state may be concerned. If it is a valid exercise of the police power of the state when applied to the public housekeeping industry, that is, to the wages of a housekeeper in a hotel, then the decision of the supreme court of Washington should be affirmed.

We desire to call attention in the first place to the fact that the occupation of chambermaid in a hotel is one ordinarily not performed by men. That if a man should engage in the occupation in question, it is fairly to be assumed that he would receive a larger wage than would a woman when doing similar work.

In the second place, there is no evidence in this case as to what was the reasonable value of the work and labor performed by the appellee for the appellant. The record is short, and contains no evidence from which the court can determine whether or not the wages fixed by the welfare committee are more or less than a reasonable wage under the conditions of the employment. The

appellant made no proof, nor offer of proof, to the effect that the wage was unreasonable.

The appellant frames its brief upon the theory that the statute fixes the wages of women and children in industry. We submit that the statute of Washington does no such thing. It declares the public policy and authorizes the welfare committee after a hearing to establish a minimum wage for women in the occupation affected, and for which the hearing was called, and the standard conditions of labor for said women.

The appellant scarcely mentions the order of the welfare commission applying to the public housekeeping industry, a copy of which is incorporated in the plaintiff's complaint in the superior court, shown in the transcript. (No copy of the transcript is available to us, and we are unable to cite the page thereof.)

It does not appear from the evidence or from any of the exhibits upon what facts the welfare commission based its recommendation for the industry in question. A review of this action of the commission on questions of law is provided for in section 19 of the act under consideration, while questions of fact arising under the act are to be determined by the committee, and no appeal lies from its decision upon a question of fact.

It is true that the welfare committee is directed by the law under certain conditions to fix the wages of women employed in an industry within the state of Washington. This board takes testimony and makes its orders upon the recommendation of a conference. It then issues an obligatory order specifying the minimum wage for women in the occupation affected. (Sections

10 and 11.) The statute, section 3, provides that the industrial welfare commission is empowered to establish such standards of wages and conditions of labor for women and minors as shall be held hereunder to be reasonable, not detrimental to health and morals and sufficient for the decent maintenance of women. Whether the wage in question was fixed for the hotel industry on the basis of its being "reasonable," or whether it was a minimum only sufficient for the "decent maintenance" of women, does not appear.

A copy of the order for the public housekeeping industry is incorporated in the complaint. Whether it is more or less than reasonable compensation under all the circumstances does not appear. No effort was made to show that a reasonable and fair rate was either more or less than the rate established by the welfare committee. The appellant below testified that at the time in question he actually was paying a lower rate, but did not say that such lower rate was fair either to the hotel or to the employee.

The supreme court of Washington, it is true, upheld the law in all its particulars, but the law in all of its particulars is not in issue in a private controversy between a hotel and its employee in a suit brought by the employee upon an implied contract for the difference between the minimum wages established by the welfare commission and the wages actually paid to the worker.

It is the appellee's contention here that the record is devoid of relevant facts necessary for a full consideration of the question of the validity of the Washington minimum wage statute which the appellant so vigorously assails.

THE ISSUES AND PROCEEDINGS BEFORE THE TRIAL COURT

It may very well be invalid under conditions which might be brought before the court, but the only conditions that are before this court are first, an order of the welfare commission establishing a minimum wage in the hotel industry, an action wherein it is alleged that the plaintiff worked for the hotel as a chambermaid under such conditions that an implied agreement arose on the part of the hotel company to pay her the minimum wage. The answer alleged the invalidity of the wage law, and set up a contract as controlling the matter upon a wage other and different than that prescribed by the committee.

There are no findings of fact. The trial court launched off into a discussion of the *Adkins* case (261 U. S. 525), announced that the minimum wage law of Washington was invalid under the principles of the *Adkins* case, and rendered a judgment for the employer. The supreme court might very properly have reversed the cause because the court below made no findings of fact or conclusions of law in support of his judgment, and the fact that the court discussed the constitutionality of the law in its opinion is of no controlling force. The judgment of the trial court was erroneous in any event.

The real issues in this case bring it more nearly within the rule of the case of *Levy Leasing Co. v. Siegel*, 258 U. S. 242, rather than within the rule of *Adkins* case (261 U. S. 525). The rule in the *Levy Leasing Co.* case, as abbreviated in the syllabus, holds that the obligation to pay a specified rent can not be said to be impaired by a limitation on the recovery to what is fair and reason-

able made by an act existing when the lease was made and carried into a subsequent statute. (258 U. S. 242, 248.)

A Minimum Wage May Be Fixed Without Violating Due Process, Provided the Wage Fixed Is Not in Fact Unreasonable or Discriminatory

It seems very difficult to understand why minimum wages may not be fixed without violating due process, if prices can be fixed without violating due process. Both interfere with liberty to contract. The legislative fixing of a minimum wage is not really different in principle from the legislative determination of hours of service which is clearly constitutional. *Miller v. Wilson*, 236 U. S. 373, 35 S. Ct. 342; *Muller v. Oregon*, 208 U. S, 412, 28 S. Ct. 324; *Bunting v. Oregon*, 243 U. S. 426, 37 S. Ct. 435.

It is the same liberty to contract that is invaded, and the same legislative policy that is involved. The aim of both types of legislation is to create an equality where none existed to prevent employers from making an unfair use of their superior bargaining power. Misuse of bargaining power leads to extortion, and surely a state should be able to legislate against extortion under its police power.

Whether there are adequate reasons for submitting certain types of contracts to the public control depends upon the economic policies of the states, and as to this the court said, in *Nebbia v. New York*, 291 U. S. 502, at page 537:

"So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy

may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or when it is declared by the legislature, to overrule it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and a judicial determination to that effect renders a court *functus officio*. * * *"

To say that the fixing of a minimum wage by the state in any industry is *ipso facto*, arbitrary or discriminatory is to beg the question. Courts are to decide concrete cases. In this case the issue is one arising out of an implied contract. A general principle may be deduced from particular lines of decision, but the categorical assertion that any attempt to fix a minimum wage in industry, due consideration being given to the type involved, is arbitrary and discriminatory, palpably invades the power of the states. Further it is an assertion by the court of a power not found in the national constitution nor given therein by inference.

It is interesting to recall, when considering general rules to limit the police power of the state, an excerpt from Blackstone's writings, Cooley's Blackstone, 4th Ed., Book I, chapter 2, section 64, page 148:

"Sir John Fortesque, C. J., in the name of his brethren declared 'that they ought not to make answer to that question; for it hath not been argued aforetime that the justices should in any wise determine the privileges of the high court of Parliament. For it is so high and mighty in its nature that it may make law, and that which is law it may make no law, and the determination and knowledge of that privilege belongs to the Lords of Parliament and not to the justices.'

"If therefore all the privileges of Parliament were once to be set down and ascertained and no privilege

to be allowed but what was so determined, it were easy for executive power to devise some new case not within the line of privilege and under pretense thereof to harass any refractory member and violate the freedom of Parliament."

The statute provides as to any industry wherein the board finds there is need of regulation that the hours and conditions of service shall also be regulated by the welfare commission. It is submitted that it is impossible to regulate hours and working conditions without vesting in the commission some power with reference to the fixing of wages, otherwise the whole cost of any improvement in conditions or any restrictions as to hours of service might be borne by the employee.

The order in question contains regulations upon both hours and conditions, and wages. It does not appear whether or not the welfare commission based the wages on what was reasonable as between the employer and the employee, and considering the law, it must be that the reasonable rate was also sufficient for the decent maintenance of the worker. Otherwise, the commission would have had to fix a higher minimum. Whether it did or did not have to fix a minimum higher than that sufficient for decent maintenance does not appear.

THE LAWS APPLIED IN SIMILAR CASES SUSTAIN REGULATIONS OF SIMILAR IMPORT, THE CONTRACT CLAUSE FORMING THE SOLE LEGITIMATE BASIS OF APPELLANT'S ATTACK UPON THE CONSTITUTIONALITY OF THE STATUTE

In *Holden v. Hardy,* 169 U. S. 366, involving the constitutionality of an eight-hour day in underground mines in Utah, Mr. Justice Brown, in sustaining the act

challenged, applied much the same principle in dealing with the police power of the state where he said:

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor who apparently under the statute is the only one liable his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employes whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand upon any equality, or where the public health demands that one party to the contract shall be protected against himself. 'The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected the state must suffer.' "

The broad general principles enunciated in the *Morehead v. Tipaldo* (56 Sup. Ct. 918) case are doubtless wide enough in principle to abridge the right of the state to fix minimum wages for women in any industry. (A discussion of the *Morehead v. Tipaldo* case is appended hereto as an appendix.) The state, however, has various fields in which it has the absolute right to fix wages. It is an employer itself on a vast scale. It exercises supervision over many types of public service concerns, and limits the total amount of wages that may be charged to the public without question.

Acker v. United States, Advance Opinions L. Ed., Vol. 80, Page 801.

It is necessary for the public welfare that water and light, transportation, health, and sanitary services should be continued, and if wage disputes are to be per-

mitted to interrupt the service, or to embarrass the public generally, it would hardly be open to question that the state would have power to take whatever measures are necessary to insure continuation of the services.

The same considerations apply in a large measure to hotels. The comfort and convenience of the traveling public require certain standards. Hotels are subject to inspection by public officers. The women who work for the hotels come in direct contact with the guests, and the hotels comply with many standards of sanitation and cleanliness through the maids and housekeepers in their employ.

Inns and innkeepers had been regulated by the law long before the business of insurance was considered.

The Statute of Washington Is Within the Police Power of the State When Applied to Fixing a Minimum Wage for Women Employees in a Hotel

Because the legislature determined that it was necessary for the public welfare for the wages of women and minors to be regulated in the public interest, and declared that the welfare of the state demands their protection from conditions of labor which have a pernicious effect on their health and morals, it expressly evoked its police and sovereign power to declare that inadequate wages and unsanitary conditions of labor assert such pernicious effect. (Section 1, chapter 174, Session Laws of Washington 1913.)

The supreme court of Washington, in the cause below, *Parrish v. West Coast Hotel Co.*, 185 Wash. 581 at page 593, said:

"That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states, needs no citation of sustaining authority. The police power of a state was not given to the federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers. It is true that the employer and the employee are deprived to a certain extent of their liberty to contract by the minimum wage law. However, if the deprivation is with due process, if it corrects a known and stated public evil, if it promotes the public welfare—that is, if it is a reasonable exercise of the police power—it is constitutional and it is a proper exercise of legislative power."

And again on page 596:

"We held in *Larsen v. Rice*, 100 Wash. 642, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore, the state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner.

"(2) If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the contrary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, p. 602, Rem. Rev. Stat., section 7623, *et seq.*, is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. * * * It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that, in the State of Washington, evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist."

THE COURTS HAVE RECOGNIZED A WIDE LATITUDE IN THE LEGISLATURE TO DETERMINE THE NECESSITY FOR PROTECTING THE PEACE, HEALTH, SAFETY, MORALS AND GENERAL WELFARE OF THE PEOPLE

The courts have always recognized the right of the legislative branch of government to determine when the necessity for protecting the peace, health, safety, morals and the general welfare of the people exists. These are things which by duty and necessity the legislature must inquire into and determine for the purpose of making rules to serve such ends. Where there is no reasonable ground for supposing that the legislature's determination is not supported by the facts, or that its judgment is one of speculation rather than from experience, its findings are not reviewable.

Powell v. Pennsylvania, 127 U. S. 678 (Oleomargarine case);
Lawton v. Steele, 152 U. S. 133;
Holden v. Hardy, 169 U. S. 366;
Jacobson v. Massachusetts, 197 U. S. 11;
Muller v. Oregon, 208 U. S. 412;
McLean v. Arkansas, 211 U. S. 539;
Tanner v. Little, 240 U. S. 369;
Radice v. New York, 264 U. S. 292;
Block v. Hirsch, 256 U. S. 135;
O'Gorman and Young v. Hartford Fire Insurance Co., 282 U. S. 251;
Missouri Pacific R. R. Co. v. Norwood, 283 U. S. 249.

In *O'Gorman and Young v. Hartford Fire Insurance Co.*, 282 U. S. 251, a statute of New Jersey set up a standard rate of compensation for fire insurance agents by

means of a fixed commission for the services rendered by the agents. The court in declaring this statute constitutional, said:

"The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the state indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

In *Mountain Timber Co. v. Washington*, 243 U. S. 219, this court said:

"The authority of the states to enact such laws as reasonably are deemed to be necessary to promote the health, safety, and general welfare of their people carries with it a wide range of judgment and discretion as to what matters are of sufficiently general importance to be subjected to state regulation and administration." (Citing the case of *Lawton v. Steele.*)

The cited case involves the destruction of fish traps by the state in protecting its fisheries.

The workman in hazardous industry in this state has no right to sue his employer for injuries suffered in the course of his employment, and he has no right to a trial by jury of such questions, "as between employee and employer, the act abolishes all right of recovery in ordinary cases, and, therefore, leaves nothing to be tried by

a jury." (243 U. S. 235.) The question of fault or negligence to defeat a claim is not open to the employer.

In *Radice v. New York*, 264 U. S. 292, at 294, this court says:

"Where the constitutional validity of a statute depends upon the assertion of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached by the legislature, and if the question of what the facts establish be a fairly debatable one it is not permissible for the judge to set up his opinion in respect to it against the lawmaker."

The court there cites the case of *Stephenson v. Binford*, 287 U. S. 251, 272. That case involved a Texas statute regulating carriers and prescribing minimum rates for carriers by motor vehicle, the same to be not less than by railroads and other public service corporations.

In *Highland v. Russell Car Co.*, 279 U. S. 253, 258, it is said:

"He does not claim that the amount paid by the defendant was not compensatory or that it did not give him a reasonable profit or that the value of the coal was greater than the price fixed by the president. The sole question is whether plaintiff's constitutional rights were infringed by the enforcement of the act and orders to prevent him from selling his coal for prices in excess of the just compensation he would have been entitled to receive if it had been taken under the sovereign power of eminent domain."

The case involved the emergency regulation of industries occasioned by the World War.

The act questioned applies only to women and minors, and the order of the welfare commission applies only to the public housekeeping industry, that is, hotels. Unquestionably, there are differences between men and

women. The health and welfare of women in the performance of physical labor is held so fundamentally to affect the public welfare and to be so much an object of public interest and concern, that legislation designed for their special protection has been sustained even when like legislation for men might not be. *Muller v. Oregon*, 208 U. S. 412, sustaining the Oregon ten-hour law for women; *Riley v. Massachusetts*, 232 U. S. 671, sustaining a 54-hour week law for women; *Hawley v. Walker*, 232 U. S. 718, sustaining a nine-hour per day statute; *Bosley v. McLaughlin*, 236 U. S. 385, sustaining a statute limiting the labor of women to 48 hours per week in California; *Radice v. New York*, 264 U. S. 292, sustaining the New York night work statute for women.

With their changed economic status, it is evident that the earning capacity of women, as well as the physical circumstances surrounding their employment, reflects on the health and welfare of themselves, their families, and the community as a whole.

CONCLUSION

We ask what standing does the appellant have in this case in asserting that the statute violates the rights of contract of a woman? The woman whose right is abridged so far as contracting for wages below the minimum is not complaining, but the appellant is neither a man nor a woman. The appellant makes a general attack upon the law but it is our contention that it can only complain of the features of the act that actually affect it. The order of the welfare commission respecting the hotel industry is the only feature of the act challenged which affects the controversy.

The question presented is therefore no broader than this, can the state make a regulation that chambermaids in a hotel shall be paid at least $14.50 per week, and in case of failure to do so, may the employee have an action against the proprietor for the difference between the amount actually paid and the amount due had the minimum rate been applied? The amount in controversy is $216.19.

In *Nebbia v. New York, supra,* Justice Roberts in discussing the police power, in relation to the 14th Amendment, said:

> "It results that a regulation valid for one sort of business or in given circumstances may be invalid for another sort, or for the same business under other circumstances because the reasonableness of each regulation depends upon the relevant facts."

Keeping in mind the fact that a hotel or an inn is a business impressed with a public interest, 6 R. C. L., constitutional law, section 218, that the present controversy is a private dispute regarding the wages to be paid by a

corporation innkeeper to a domestic, that the amount in controversy is only $216.19, that no showing is made that payment at the rate prescribed by the welfare committee is unfair or unreasonable, or that it imposes any hardship on the employer, or that its business will not be profitable notwithstanding it pays the wages prescribed, and that no express contract was shown for a rate of wages different from that prescribed in the rules of the welfare commission, we submit that no sufficient, relevant facts are adduced upon which to base a general attack upon the constitutionality of chapter 174, Laws of 1913, of the State of Washington, entitled, "Minimum Wages for Women."

Therefore, the judgment of the supreme court of the State of Washington herein should be affirmed.

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APPENDIX

DISCUSSION OF THE CASE OF MOREHEAD v. TIPALDO, 56 SUP. CT. 918.

At the very outset of this case, Justice Butler, in writing the majority opinion, restricted his decision to this bare question: Is this case distinguishable from the *Adkins* case? The court states quite clearly that it was not reconsidering the question of constitutionality involved in that case. The reason for this self-imposed limitation is stated to be a general rule of court procedure that "this court confines itself to the ground upon which the writ was asked or granted." Appellants' main argument was directed to the contention that the cases were distinguishable; a review of the former case was not sought. The court, having thus limited its holding, limited it even further by deciding that it was bound by the interpretation given the statute by the New York court of appeals. (*People ex rel. Tipaldo v. Morehead*, 270 N. Y. 233, 200 N. E. 799.)

With these limitations, the Court held that the statute as interpreted violated due process and was unconstitutional. It is open to question, considering the dissenting opinion of the Chief Justice, whether or not the New York court of appeals attempted to interpret the statute or was simply comparing the New York act with that involved in the *Adkins* case, in stating that it believed them indistinguishable in principle. Of probably greater moment than the actual decision of this case is the breadth of the language used. It is here that the really fundamental differences between the majority and the minority of the court are to be found. Justice Butler propounded in one passage the following principle:

"Legislative abridgement of that freedom (in making contracts of employment) can only be justified by the existence of exceptional circumstances. Freedom of contract is the general rule, and restraint the exception."

Some of the best traditions of the supreme court have time and again recognized that freedom of contract is not unlimited, but is subject to regulation under the police powers of the state. *McLean v. State of Arkansas*, 211 U. S. 539; *Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co.*, 284 U. S. 151, 52 S. Ct. 69.

In the latter case the court said:

"The right to make contracts embraced in the concept of liberty guaranteed by the Fourteenth Amendment is not unlimited Liberty implies only freedom from arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Hence, legislation otherwise within the scope of acknowledged state power, not unreasonably or arbitrarily exercised cannot be condemned because it curtails the power of the individual to contract."

As early as 1885, the court expressed these same sentiments in *Barbier v. Connolly*, 113 U. S. 27, 5 S. Ct. 357:

"But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people. * * *"

We believe further with the author of the Michigan Law Review, volume 34, page 1180, for June, 1936, that it has always been a cardinal principle of constitutional interpretation that when the constitutionality of an act depends upon the existence of a certain fact situation, the burden of proving that such facts do not exist falls upon the party alleging unconstitutionality. The presumption

of constitutionality is very strong when the legislature has found such facts to exist. Unless the act in question is unmistakably and palpably in excess of legislative power, the action of the legislature is free from objection on constitutional grounds. *Lawrence v. State Tax Commission*, 286 U. S. 276 at 283, 52 S. Ct. 556; *Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co.*, 284 U. S. 151, 52 S. Ct. 69; *McLean v. State of Arkansas*, 211 U. S. 539, 29 S. Ct. 206; *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505; *O'Gorman and Young v. Hartford Fire Insurance Co.*, 282 U. S. 251, 51 S. Ct. 130; *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194, 55 S. Ct. 187.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1936.

West Coast Hotel Company, Appellant,
vs.
Ernest Parrish and Elsie Parrish, his wife.

Appeal from the Supreme Court of the State of Washington.

[March 29, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This case presents the question of the constitutional validity of the minimum wage law of the State of Washington.

The Act, entitled "Minimum Wages for Women", authorizes the fixing of minimum wages for women and minors. Laws of 1913 (Washington) chap. 174; Remington's Rev. Stat. (1932), secs. 7623 *et. seq.* It provides:

"Section 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power, declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

"Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

"Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women".

Further provisions required the Commission to ascertain the wages and conditions of labor of women and minors within the State. Public hearings were to be held. If after investigation the Commission found that in any occupation, trade or industry the wages paid to women were "inadequate to supply them necessary

cost of living and to maintain the workers in health", the Commission was empowered to call a conference of representatives of employers and employees together with disinterested persons representing the public. The conference was to recommend to the Commission, on its request, an estimate of a minimum wage adequate for the purpose above stated, and on the approval of such a recommendation it became the duty of the Commission to issue an obligatory order fixing minimum wages. Any such order might be reopened and the question reconsidered with the aid of the former conference or a new one. Special licenses were authorized for the employment of women who were "physically defective or crippled by age or otherwise", and also for apprentices, at less than the prescribed minimum wage.

By a later Act the Industrial Welfare Commission was abolished and its duties were assigned to the Industrial Welfare Committee consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician and the Supervisor of Women in Industry. Laws of 1921 (Washington) chap. 7; Remington's Rev. Stat. (1932), secs 10840, 10893.

The appellant conducts a hotel. The appellee Elsie Parrish was employed as a chambermaid and (with her husband) brought this suit to recover the difference between the wages paid her and the minimum wage fixed pursuant to the state law. The minimum wage was $14.50 per week of 48 hours. The appellant challenged the act as repugnant to the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of the State, reversing the trial court, sustained the statute and directed judgment for the plaintiffs. *Parrish* v. *West Coast Hotel Co.*, 185 Wash. 581. The case is here on appeal.

The appellant relies upon the decision of this Court in *Adkins* v. *Children's Hospital*, 261 U. S. 525, which held invalid the District of Columbia Minimum Wage Act which was attacked under the due process clause of the Fifth Amendment. On the argument at bar, counsel for the appellees attempted to distinguish the *Adkins* case upon the ground that the appellee was employed in a hotel and that the business of an innkeeper was affected with a public interest. That effort at distinction is obviously futile, as it appears that in one of the cases ruled by the *Adkins* opinion the employee was a

woman employed as an elevator operator in a hotel. *Adkins* v. *Lyons*, 261 U. S. 525, at p. 542.

The recent case of *Morehead* v. *New York ex rel. Tipaldo*, 298 U. S. 587, came here on certiorari to the New York court which had held the New York minimum wage act for women to be invalid. A minority of this Court thought that the New York statute was distinguishable in a material feature from that involved in the *Adkins* case and that for that and other reasons the New York statute should be sustained. But the Court of Appeals of New York had said that it found no material difference between the two statutes and this Court held that the "meaning of the statute" as fixed by the decision of the state court "must be accepted here as if the meaning had been specifically expressed in the enactment". Id., p. 609. That view led to the affirmance by this Court of the judgment in the *Morehead* case, as the Court considered that the only question before it was whether the *Adkins* case was distinguishable and that reconsideration of that decision had not been sought. Upon that point the Court said: "The petition for the writ sought review upon the ground that this case [Morehead] is distinguishable from that one [Adkins]. No application has been made for reconsideration of the constitutional question there decided. The validity of the principles upon which that decision rests is not challenged. This court confines itself to the ground upon which the writ was asked or granted. . . . Here the review granted was no broader than that sought by the petitioner . . . . He is not entitled and does not ask to be heard upon the question whether the *Adkins* case should be overruled. He maintains that it may be distinguished on the ground that the statutes are vitally dissimilar". *Id.*, pp. 604, 605.

We think that the question which was not deemed to be open in the *Morehead* case is open and is necessarily presented here. The Supreme Court of Washington has upheld the minimum wage statute of that State. It has decided that the statute is a reasonable exercise of the police power of the State. In reaching that conclusion the state court has invoked principles long established by this Court in the application of the Fourteenth Amendment. The state court has refused to regard the decision in the *Adkins* case as determinative and has pointed to our decisions both before and since that case as justifying its position. We are of the opinion that this ruling of the state court demands on our part a reex-

amination of the *Adkins* case. The importance of the question, in which many States having similar laws are concerned, the close division by which the decision in the *Adkins* case was reached, and the economic conditions which have supervened, and in the light of which the reasonableness of the exercise of the protective power of the State must be considered, make it not only appropriate, but we think imperative, that in deciding the present case the subject should receive fresh consideration.

The history of the litigation of this question may be briefly stated. The minimum wage statute of Washington was enacted over twenty three years ago. Prior to the decision in the instant case it had twice been held valid by the Supreme Court of the State. *Larsen* v. *Rice*, 100 Wash. 642; *Spokane Hotel Co.* v. *Younger*, 113 Wash. 359. The Washington statute is essentially the same as that enacted in Oregon in the same year. Laws of 1913 (Oregon) chap. 62. The validity of the latter act was sustained by the Supreme Court of Oregon in *Stettler* v. *O'Hara*, 69 Ore. 519, and *Simpson* v. *O'Hara*, 70 Ore. 261. These cases, after reargument, were affirmed here by an equally divided court, in 1917. 243 U. S. 629. The law of Oregon thus continued in effect. The District of Columbia Minimum Wage Law (40 Stat. 960) was enacted in 1918. The statute was sustained by the Supreme Court of the District in the *Adkins* case. Upon appeal the Court of Appeals of the District first affirmed that ruling but on rehearing reversed it and the case came before this Court in 1923. The judgment of the Court of Appeals holding the Act invalid was affirmed, but with Chief Justice Taft, Mr. Justice Holmes and Mr. Justice Sanford dissenting, and Mr. Justice Brandeis taking no part. The dissenting opinions took the ground that the decision was at variance with the principles which this Court had frequently announced and applied. In 1925 and 1927, the similar minimum wage statutes of Arizona and Arkansas were held invalid upon the authority of the *Adkins* case. The Justices who had dissented in that case bowed to the ruling and Mr. Justice Brandeis dissented. *Murphy* v. *Sardell*, 269 U. S. 530; *Donham* v. *West-Nelson Co.*, 273 U. S. 657. The question did not come before us again until the last term in the *Morehead* case, as already noted. In that case, briefs supporting the New York statute were submitted by the States of Ohio, Connecticut, Illinois, Massachusetts, New Hampshire, New Jersey and Rhode Island. 298 U. S., p. 604, *note*. Throughout this entire period the Washington statute now under consideration has been in force.

The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the States, as the due process clause invoked in the *Adkins* case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described:[1]

"But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community". *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, 565.

This power under the Constitution to restrict freedom of contract has had many illustrations.[2] That it may be exercised in the public interest with respect to contracts between employer and employee

[1] Allgeyer *v.* Louisiana, 165 U. S. 578; Lochner *v.* New York, 198 U. S. 45; Adair *v* United States, 208 U. S. 161.

[2] Munn *v.* Illinois, 94 U. S. 113; Railroad Commission Cases, 116 U. S. 307; Willcox *v.* Consolidated Gas Co., 212 U. S. 19; Atkin *v.* Kansas, 191 U. S. 207; Mugler *v.* Kansas, 123 U. S. 623; Crowley *v.* Christensen, 137 U. S. 86; Gundling *v.* Chicago, 177 U. S. 183; Booth *v.* Illinois, 184 U. S. 425; Schmidinger *v.* Chicago, 226 U. S. 578; Armour *v.* North Dakota, 240 U. S. 510; National Fire Insurance Co. *v.* Wanberg, 260 U. S. 71; Radice *v.* New York,

is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day (*Holden* v. *Hardy*, 169 U. S. 366); in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages (*Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13); in forbidding the payment of seamen's wages in advance (*Patterson* v. *Bark Eudora*, 190 U. S. 169); in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (*McLean* v. *Arkansas*, 211 U. S. 539); in prohibiting contracts limiting liability for injuries to employees (*Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, *supra*); in limiting hours of work of employees in manufacturing establishments (*Bunting* v. *Oregon*, 243 U. S. 426); and in maintaining workmen's compensation laws (*New York Central R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219). In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, *supra*, p. 570.

The point that has been strongly stressed that adult employees should be deemed competent to make their own contracts was decisively met nearly forty years ago in *Holden* v. *Hardy*, *supra*, where we pointed out the inequality in the footing of the parties. We said (*Id.*, 397):

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employés, while the latter are often induced by the fear of discharge to conform to regulations which their

264 U. S. 292; Yeyser *v.* Dysart, 267 U. S. 540; Liberty Warehouse Company *v.* Burley Tobacco Growers' Association, 276 U. S. 71, 97; Highland *v.* Russell Car Co., 279 U. S. 253, 261; O'Gorman *v.* Hartford Insurance Co., 282 U. S. 249, 251; Hardware Insurance Co. *v.* Glidden Co., 284 U. S. 151, 157; Packer Corporation *v.* Utah, 285 U. S. 95, 111; Stephenson *v.* Binford, 287 U. S. 251, 274; Hartford Accident Co. *v.* Nelson Co., 291 U. S. 352, 360; Peterson Baking Co. *v.* Bryan, 290 U. S. 570; Nebbia *v.* New York, 291 U. S. 502, 527-529.

judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority".

And we added that the fact "that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself". "The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer".

It is manifest that this established principle is peculiarly applicable in relation to the employment of women in whose protection the State has a special interest. That phase of the subject received elaborate consideration in *Muller* v. *Oregon* (1908), 208 U. S. 412, where the constitutional authority of the State to limit the working hours of women was sustained. We emphasized the consideration that "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence" and that her physical well being "becomes an object of public interest and care in order to preserve the strength and vigor of the race". We emphasized the need of protecting women against oppression despite her possession of contractual rights. We said that "though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right". Hence she was "properly placed in a class by herself, and legislation designed for her protection may be sustained even when like legislation is not necessary for men and could not be sustained". We concluded that the limitations which the statute there in question "placed upon her contractual powers, upon her right to agree with her employer as to the time she shall labor" were "not imposed solely for her benefit, but also largely for the benefit of all". Again, in *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 63, in referring to a differentiation with respect to the employment of

women, we said that the Fourteenth Amendment did not interfere with state power by creating a "fictitious equality". We referred to recognized classifications on the basis of sex with regard to hours of work and in other matters, and we observed that the particular points at which that difference shall be enforced by legislation were largely in the power of the State. In later rulings this Court sustained the regulation of hours of work of women employees in *Riley* v. *Massachusetts,* 232 U. S. 671 (factories), *Miller* v. *Wilson,* 236 U. S. 373 (hotels), and *Bosley* v. *McLaughlin,* 236 U. S. 385 (hospitals).

This array of precedents and the principles they applied were thought by the dissenting Justices in the *Adkins* case to demand that the minimum wage statute be sustained. The validity of the distinction made by the Court between a minimum wage and a maximum of hours in limiting liberty of contract was especially challenged. 261 U. S., p. 564. That challenge persists and is without any satisfactory answer. As Chief Justice Taft observed: "In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to the one is not greater in essence than the other and is of the same kind. One is the multiplier and the other the multiplicand". And Mr. Justice Holmes, while recognizing that "the distinctions of the law are distinctions of degree", could "perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate". *Id.*, p. 569.

One of the points which was pressed by the Court in supporting its ruling in the *Adkins* case was that the standard set up by the District of Columbia Act did not take appropriate account of the value of the services rendered. In the *Morehead* case, the minority thought that the New York statute had met that point in its definition of a "fair wage" and that it accordingly presented a distinguishable feature which the Court could recognize within the limits which the *Morehead* petition for certiorari was deemed to present. The Court, however, did not take that view and the New York Act was held to be essentially the same as that for the District of Columbia. The statute now before us is like the latter, but we are unable to conclude that in its minimum wage require-

ment the State has passed beyond the boundary of its broad protective power.

The minimum wage to be paid under the Washington statute is fixed after full consideration by representatives of employers, employees and the public. It may be assumed that the minimum wage is fixed in consideration of the services that are performed in the particular occupations under normal conditions. Provision is made for special licenses at less wages in the case of women who are incapable of full service. The statement of Mr. Justice Holmes in the *Adkins* case is pertinent: "This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been upheld". 261 U. S., p. 570. And Chief Justice Taft forcibly pointed out the consideration which is basic in a statute of this character: "Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large". *Id.*, p. 563.

We think that the views thus expressed are sound and that the decision in the *Adkins* case was a departure from the true application of the principles governing the regulation by the State of the relation of employer and employed. Those principles have been reenforced by our subsequent decisions. Thus in *Radice* v. *New York*, 264 U. S. 292, we sustained the New York statute which restricted the employment of women in restaurants at night. In *O'Gorman* v. *Hartford Fire Insurance Company*, 282 U. S. 251, which upheld an act regulating the commissions of insurance agents, we pointed to the presumption of the constitutionality of a statute

dealing with a subject within the scope of the police power and to the absence of any factual foundation of record for deciding that the limits of power had been transcended. In *Nebbia* v. *New York*, 291 U. S. 502, dealing with the New York statute providing for minimum prices for milk, the general subject of the regulation of the use of private property and of the making of private contracts received an exhaustive examination and we again declared that if such laws "have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied"; that "with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal"; that "times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power". *Id.*, pp. 537, 538.

With full recognition of the earnestness and vigor which characterize the prevailing opinion in the *Adkins* case, we find it impossible to reconcile that ruling with these well-considered declarations. What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end? The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. The legislature was entitled to adopt measures to reduce the evils of the "sweating system", the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living thus making their very helplessness the occasion of a most injurious competition. The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection. The adoption of similar requirements by many

States evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment.

There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land. While in the instant case no factual brief has been presented, there is no reason to doubt that the State of Washington has encountered the same social problem that is present elsewhere. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest. The argument that the legislation in question constitutes an arbitrary discrimination, because it does not extend to men, is unavailing. This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature "is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest". If "the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied". There is no "doctrinaire requirement" that the legislation should be couched in all embracing terms. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Keokee Coke Co.* v.

Taylor, 234 U. S. 224, 227; *Sproles* v. *Binford*, 286 U. S. 374, 396; *Semler* v. *Oregon Board*, 294 U. S. 608, 610, 611. This familiar principle has repeatedly been applied to legislation which singles out women, and particular classes of women, in the exercise of the State's protective power. *Miller* v. *Wilson, supra*, p. 384; *Bosley* v. *McLaughlin, supra*, pp. 394, 395; *Radice* v. *New York, supra*, pp. 295-298. Their relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment.

Our conclusion is that the case of *Adkins* v. *Children's Hospital, supra*, should be, and it is, overruled. The judgment of the Supreme Court of the State of Washington is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1936.

West Coast Hotel Company, Appellant, *vs.* Ernest Parrish and Elsie Parrish, his wife.	Appeal from the Supreme Court of the State of Washington.

[March 29, 1937.]

Mr. Justice Sutherland.

Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Butler and I think the judgment of the court below should be reversed.

The principles and authorities relied upon to sustain the judgment, were considered in *Adkins* v. *Children's Hospital*, 261 U. S. 525, and *Morehead* v. *New York ex rel. Tipaldo*, 298 U. S. 587; and their lack of application to cases like the one in hand was pointed out. A sufficient answer to all that is now said will be found in the opinions of the court in those cases. Nevertheless, in the circumstances, it seems well to restate our reasons and conclusions.

Under our form of government, where the written Constitution, by its own terms, is the supreme law, some agency, of necessity, must have the power to say the final word as to the validity of a statute assailed as unconstitutional. The Constitution makes it clear that the power has been intrusted to this court when the question arises in a controversy within its jurisdiction; and so long as the power remains there, its exercise cannot be avoided without betrayal of the trust.

It has been pointed out many times, as in the *Adkins* case, that this judicial duty is one of gravity and delicacy; and that rational doubts must be resolved in favor of the constitutionality of the statute. But whose doubts, and by whom resolved? Undoubtedly it is the duty of a member of the court, in the process

of reaching a right conclusion, to give due weight to the opposing views of his associates; but in the end, the question which he must answer is not whether such views seem sound to those who entertain them, but whether they convince him that the statute is constitutional or engender in his mind a rational doubt upon that issue. The oath which he takes as a judge is not a composite oath, but an individual one. And in passing upon the validity of a statute, he discharges a duty imposed upon *him*, which cannot be consummated justly by an automatic acceptance of the views of others which have neither convinced, nor created a reasonable doubt in, his mind. If upon a question so important he thus surrender his deliberate judgment, he stands forsworn. He cannot subordinate his convictions to that extent and keep faith with his oath or retain his judicial and moral independence.

The suggestion that the only check upon the exercise of the judicial power, when properly invoked, to declare a constitutional right superior to an unconstitutional statute is the judge's own faculty of self-restraint, is both ill considered and mischievous. Self-restraint belongs in the domain of will and not of judgment. The check upon the judge is that imposed by his oath of office, by the Constitution and by his own conscientious and informed convictions; and since he has the duty to make up his own mind and adjudge accordingly, it is hard to see how there could be any other restraint. This court acts as a unit. It cannot act in any other way; and the majority (whether a bare majority or a majority of all but one of its members), therefore, establishes the controlling rule as the decision of the court, binding, so long as it remains unchanged, equally upon those who disagree and upon those who subscribe to it. Otherwise, orderly administration of justice would cease. But it is the right of those in the minority to disagree, and sometimes, in matters of grave importance, their imperative duty to voice their disagreement at such length as the occasion demands—always, of course, in terms which, however forceful, do not offend the proprieties or impugn the good faith of those who think otherwise.

It is urged that the question involved should now receive fresh consideration, among other reasons, because of "the economic conditions which have supervened"; but the meaning of the Constitution does not change with the ebb and flow of economic events.

We frequently are told in more general words that the Constitution must be construed in the light of the present. If by that it is meant that the Constitution is made up of living words that apply to every new condition which they include, the statement is quite true. But to say, if that be intended, that the words of the Constitution mean today what they did not mean when written—that is, that they do not apply to a situation now to which they would have applied then—is to rob that instrument of the essential element which continues it in force as the people have made it until they, and not their official agents, have made it otherwise.

The words of Judge Campbell in *Twitchell* v. *Blodgett*, 13 Mich. 127, 139-140, apply with peculiar force. "But it may easily happen," he said, "that specific provisions may, in unforeseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding. Constitutions can not be changed by events alone. . They remain binding as the acts of the people in their sovereign capacity, as the framers of Government, until they are amended or abrogated by the action prescribed by the authority which created them. It is not competent for any department of the Government to change a constitution, or declare it changed, simply because it appears ill adapted to a new state of things.

" . . . Restrictions have, it is true, been found more likely than grants to be unsuited to unforeseen circumstances . . . But, where evils arise from the application of such regulations, their force cannot be denied or evaded; and the remedy consists in repeal or amendment, and not in false construction." The principle is reflected in many decisions of this court. See *South Carolina* v. *United States*, 199 U. S. 437, 448-449; *Lake County* v. *Rollins*, 130 U. S. 662, 670; *Knowlton* v. *Moore*, 178 U. S. 41, 95; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 723; *Craig* v. *Missouri*, 4 Pet. 410, 431-432; *Ex parte Bain*, 121 U. S. 1, 12; *Maxwell* v. *Dow*, 176 U. S. 581, 602; *Jarrolt* v. *Moberly*, 103 U. S. 580, 586.

The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase "supreme law of the land" stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections.

If the Constitution, intelligently and reasonably construed in the light of these principles, stands in the way of desirable legislation, the blame must rest upon that instrument, and not upon the court for enforcing it according to its terms. The remedy in that situation—and the only true remedy—is to amend the Constitution. Judge Cooley, in the first volume of his Constitutional Limitations (8th ed.), p. 124, very clearly pointed out that much of the benefit expected from written constitutions would be lost if their provisions were to be bent to circumstances or modified by public opinion. He pointed out that the common law, unlike a constitution, was subject to modification by public sentiment and action which the courts might recognize; but that "a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. . . . What a court is to do, therefore, is *to declare the law as written*, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it."

The *Adkins* case dealt with an act of Congress which had passed the scrutiny both of the legislative and executive branches of the government. We recognized that thereby these departments had affirmed the validity of the statute, and properly declared that their determination must be given great weight, but we then concluded, after thorough consideration, that their view could not be sustained. We think it not inappropriate now to add a word on that subject before coming to the question immediately under review.

The people by their Constitution created three separate, distinct, independent and coequal departments of government. The governmental structure rests, and was intended to rest, not upon any one or upon any two, but upon all three of these fundamental pillars. It seems unnecessary to repeat, what so often has been said, that the powers of these departments are different and are to be exercised independently. The differences clearly and definitely

appear in the Constitution. Each of the departments is an agent of its creator; and one department is not and cannot be the agent of another. Each is answerable to its creator for what it does, and not to another agent. The view, therefore, of the Executive and of Congress that an act is constitutional is persuasive in a high degree; but it is not controlling.

Coming, then, to a consideration of the Washington statute, it first is to be observed that it is in every substantial respect identical with the statute involved in the *Adkins* case. Such vices as existed in the latter are present in the former. And if the *Adkins* case was properly decided, as we who join in this opinion think it was, it necessarily follows that the Washington statute is invalid.

In support of minimum-wage legislation it has been urged, on the one hand, that great benefits will result in favor of underpaid labor, and, on the other hand, that the danger of such legislation is that the minimum will tend to become the maximum and thus bring down the earnings of the more efficient toward the level of the less-efficient employees. But with these speculations we have nothing to do. We are concerned only with the question of constitutionality.

That the clause of the Fourteenth Amendment which forbids a state to deprive any person of life, liberty or property without due process of law includes freedom of contract is so well settled as to be no longer open to question. Nor reasonably can it be disputed that contracts of employment of labor are included in the rule. *Adair* v. *United States*, 208 U. S. 161, 174-175; *Coppage* v. *Kansas*, 236 U. S. 1, 10, 14. In the first of these cases, Mr. Justice Harlan, speaking for the court, said, "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. . . . In all such particulars the employer and employé have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

In the *Adkins* case we referred to this language, and said that while there was no such thing as absolute freedom of contract, but that it was subject to a great variety of restraints, nevertheless, freedom of contract was the general rule and restraint the excep-

tion; and that the power to abridge that freedom could only be justified by the existence of exceptional circumstances. This statement of the rule has been many times affirmed; and we do not understand that it is questioned by the present decision.

We further pointed out four distinct classes of cases in which this court from time to time had upheld statutory interferences with the liberty of contract. They were, in brief, (1) statutes fixing rates and charges to be exacted by businesses impressed with a public interest; (2)) statutes relating to contracts for the performance of public work; (3) statutes prescribing the character, methods and time for payment of wages; and (4) statutes fixing hours of labor. It is the last class that has been most relied upon as affording support for minimum-wage legislation; and much of the opinion in the *Adkins* case (261 U. S. 547-553) is devoted to pointing out the essential distinction between fixing hours of labor and fixing wages. What is there said need not be repeated. It is enough for present purposes to say that statutes of the former class deal with an incident of the employment, having no necessary effect upon wages. The parties are left free to contract about wages, and thereby equalize such additional burdens as may be imposed upon the employer as a result of the restrictions as to hours by an adjustment in respect of the amount of wages. This court, wherever the question is adverted to, has been careful to disclaim any purpose to uphold such legislation as fixing wages, and has recognized an essential difference between the two. *E. g.*, *Bunting* v. *Oregon*, 243 U. S. 426; *Wilson* v. *New*, 243 U. S. 332, 345-346, 353-354; and see Freund, Police Power, § 318.

We then pointed out that minimum-wage legislation such as that here involved does not deal with any business charged with a public interest, or with public work, or with a temporary emergency, or with the character, methods or periods of wage payments, or with hours of labor, or with the protection of persons under legal disability, or with the prevention of fraud. It is, simply and exclusively, a law fixing wages for adult women who are legally as capable of contracting for themselves as men, and cannot be sustained unless upon principles apart from those involved in cases already decided by the court.

Two cases were involved in the *Adkins* decision. In one of them it appeared that a woman 21 years of age, who brought the

suit, was employed as an elevator operator at a fixed salary. Her services were satisfactory, and she was anxious to retain her position, and her employer, while willing to retain her, was obliged to dispense with her services on account of the penalties prescribed by the act. The wages received by her were the best she was able to obtain for any work she was capable of performing; and the enforcement of the order deprived her, as she alleged, not only of that employment, but left her unable to secure any position at which she could make a living with as good physical and moral surroundings and as good wages as she was receiving and was willing to take. The Washington statute, of course, admits of the same situation and result, and, for aught that appears to the contrary, the situation in the present case may have been the same as that just described. Certainly, to the extent that the statute applies to such cases, it cannot be justified as a reasonable restraint upon the freedom of contract. On the contrary, it is essentially arbitrary.

Neither the statute involved in the *Adkins* case nor the Washington statute, so far as it is involved here, has the slightest relation to the capacity or earning power of the employee, to the number of hours which constitute the day's work, the character of the place where the work is to be done, or the circumstances or surroundings of the employment. The sole basis upon which the question of validity rests is the assumption that the employee is entitled to receive a sum of money sufficient to provide a living for her, keep her in health and preserve her morals. And, as we pointed out at some length in that case (pp. 555-557), the question thus presented for the determination of the board can not be solved by any general formula prescribed by a statutory bureau, since it is not a composite but an individual question to be answered for each individual, considered by herself. What we said further in that case (pp. 557-559), is equally applicable here:

"The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he

is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It therefore undertakes to solve but one-half of the problem. The other half is the establishment of a corresponding standard of efficiency, and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law is not confined to the great and powerful employers but embraces those whose bargaining power may be as weak as that of the employee. It takes no account of periods of stress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole.

"The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it. The moral requirement implicit in every contract of employment, viz, that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely

ignored. The necessities of the employee are alone considered and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker or grocer to buy food, he is morally entitled to obtain the worth of his money but he is not entitled to more. If what he gets is worth what he pays he is not justified in demanding more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States."

Whether this would be equally or at all true in respect of the statutes of some of the states we are not called upon to say. They are not now before us; and it is enough that it applies in every particular to the Washington statute now under consideration.

The Washington statute, like the one for the District of Columbia, fixes minimum wages for adult women. Adult men and their employers are left free to bargain as they please; and it is a sig-

nificant and an important fact that all state statutes to which our attention has been called are of like character. The common-law rules restricting the power of women to make contracts have, under our system, long since practically disappeared. Women today stand upon a legal and political equality with men. There is no longer any reason why they should be put in different classes in respect of their legal right to make contracts; nor should they be denied, in effect, the right to compete with men for work paying lower wages which men may be willing to accept. And it is an arbitrary exercise of the legislative power to do so. In the *Tipaldo* case, 298 U. S. 587, 615, it appeared that the New York legislature had passed two minimum-wage measures—one dealing with women alone, the other with both men and women. The act which included men was vetoed by the governor. The other, applying to women alone, was approved. The "factual background" in respect of both measures was substantially the same. In pointing out the arbitrary discrimination which resulted (p. 615-617) we said:

"These legislative declarations, in form of findings or recitals of fact, serve well to illustrate why any measure that deprives employers and adult women of freedom to agree upon wages, leaving employers and men employees free so to do, is necessarily arbitrary. Much, if not all, that in them is said in justification of the regulations that the Act imposes in respect of women's wages applies with equal force in support of the same regulation of men's wages. While men are left free to fix their wages by agreement with employers, it would be fanciful to suppose that the regulation of women's wages would be useful to prevent or lessen the evils listed in the first section of the Act. Men in need of work are as likely as women to accept the low wages offered by unscrupulous employers. Men in greater number than women support themselves and dependents and because of need will work for whatever wages they can get and that without regard to the value of the service and even though the pay is less than minima prescribed in accordance with this Act. It is plain that, under circumstances such as those portrayed in the 'Factual background' prescribing of minimum wages for women alone would unreasonably restrain them in competition with men and tend arbitrarily to deprive them of employment and a fair chance to find work."

An appeal to the principle that the legislature is free to recognize degrees of harm and confine its restrictions accordingly, is but to beg the question, which is—since the contractual rights of men and women are the same, does the legislation here involved, by restricting only the rights of women to make contracts as to wages, create an arbitrary discrimination? We think it does. Difference of sex affords no reasonable ground for making a restriction applicable to the wage contracts of all working women from which like contracts of all working men are left free. Certainly a suggestion that the bargaining ability of the average woman is not equal to that of the average man would lack substance. The ability to make a fair bargain, as everyone knows, does not depend upon sex.

If, in the light of the facts, the state legislation, without reason or for reasons of mere expediency, excluded men from the provisions of the legislation, the power was exercised arbitrarily. On the other hand, if such legislation in respect of men was properly omitted on the ground that it would be unconstitutional, the same conclusion of unconstitutionality is inescapable in respect of similar legislative restraint in the case of women, 261 U. S. 553.

Finally, it may be said that a statute absolutely fixing wages in the various industries at definite sums and forbidding employers and employees from contracting for any other than those designated, would probably not be thought to be constitutional. It is hard to see why the power to fix minimum wages does not connote a like power in respect of maximum wages. And yet, if both powers be exercised in such a way that the minimum and the maximum so nearly approach each other as to become substantially the same, the right to make any contract in respect of wages will have been completely abrogated.

A more complete discussion may be found in the *Adkins* and *Tipaldo* cases cited *supra*.